ENVIRONMENTAL BREAKFAST CLUB
REGULATORY SUMMARY

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Final Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
OTHER			
FEDERAL **Lead Renovation, Repair and Painting Program Rule** 40 CFR Part 745 76 Fed. Reg. 47918 (Aug. 5, 2011)	EPA **declined to revise the 2008 lead renovation, repair and painting program rule to add extra testing requirements** designed to ensure that lead-based paint hazards generated by renovation work are cleaned before the work is completed and the work areas are reoccupied. In 2008, EPA established accreditation, training, certification, work practice, and recordkeeping requirements for persons performing renovations for compensation on pre-1978 housing and child-occupied facilities. The rule requires post-cleanup verification consisting of a "white glove" test with optional dust wipe testing. Dust wipe testing requires laboratory analysis and so is more burdensome than the white glove test, which entails wiping surfaces with a disposable cloth and comparing the results to a cleaning verification card. With the recent rulemaking, EPA proposed to require dust wipe testing after certain larger interior renovation projects or projects likely to result in significant paint disturbance. EPA also proposed to require that test results be provided to the owner of the building and occupants of individual renovated housing units. After considering the public comments received, EPA concluded that, "on balance, the information before the Agency does not support imposing a dust wipe testing or clearance requirement on renovations." However, EPA adopted other minor revisions relating to sampling, training program accreditation, and standards for e-learning, among other changes. The rule can be found in the August 5, 2011 Federal Register at: www.gpo.gov/fdsys.	The rulemaking is primarily of interest to companies that perform commercial renovation activities involving the disturbance of lead-based paint in pre-1978 housing and child-occupied facilities such as day care centers.	The revised rule takes effect October 4, 2011.

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
SOLID/HAZARDOUS WASTE			
FEDERAL **Definition of Solid Waste as Applied to Hazardous Secondary Materials** 40 CFR Parts 260, 261, and 266 76 Fed. Reg. 44094 (July 22, 2011)	EPA proposed to **clarify the definition of "solid waste" for certain types of hazardous secondary materials that are currently excluded from regulation subject to certain conditions.** In 2008, EPA extended an existing rule exempting certain hazardous secondary materials from regulation to include materials that are: (1) generated and legitimately reclaimed under the control of the generator; (2) generated and transferred to another company for legitimate reclamation, provided the generator and reclaimer meet certain conditions relating to notification, containment, due diligence, and recordkeeping, among others; and (3) determined to be non-waste following a case-by-case review. EPA also defined "legitimate" recycling activities to clarify what types of activities are considered authentic, as opposed to sham, recycling. The rule proved extremely controversial, with critics charging that the revisions were unlawful and would increase the risks to public health from discarded hazardous secondary materials. With the recent rulemaking, EPA proposed to revise the 2008 rule to: (1) withdraw the provision exempting hazardous materials transferred from the generator to other persons for the purpose of reclamation and instead regulate the materials as hazardous waste while allowing the generator to accumulate materials for up to a year without a permit provided the generator makes advance arrangements for reclamation; (2) retain the exemption for materials generated and reclaimed under the control of the generator but impose additional containment, notification, recordkeeping and other requirements on the generator; (3) revise the definition of legitimacy to make all legitimacy factors mandatory and require documentation of legitimacy; and (4) revise the rules for obtaining solid waste variances and non-waste determinations to ensure greater consistency and protectiveness. The proposed regulation can be found in the July 22, 2011 Federal Register at: www.gpo.gov/fdsys.	The proposed changes potentially affect companies that produce hazardous secondary materials such as spent materials, listed sludges and listed byproducts that can readily be reclaimed either on-site or by a third party. DEC never revised its hazardous waste regulations to incorporate the 2008 rule; as a result, the controversial provisions never took effect in New York.	EPA is accepting comments on the proposed rule until **October 20, 2011** (extended from September 20, 2011).

Citation	Summary	Implications	Schedule/Notes
OTHER			
FEDERAL **Emergency and Hazardous Chemical Inventory Forms (Tier I and Tier II)** 40 CFR Part 370 76 Fed. Reg. 48093 (Aug. 8, 2011)	EPA **proposed to revise its Emergency and Hazardous Chemical Inventory Forms (Tier I and Tier II)** issued under Section 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA), 42 USC §11022. EPCRA §312 requires facilities that store chemicals covered by a material safety data sheet (MSDS) above certain threshold quantities to submit annual inventory forms to state and local emergency planning organizations and the local fire department. These forms contain information likely to be useful in a chemical-related emergency, including the types, amounts and locations of chemicals stored on-site. With this rulemaking, EPA proposed the following changes to the forms: • Add facility phone number, latitude and longitude, number of full time employees, and facility identification numbers issued by EPA under the Toxics Release Inventory and Clean Air Act (CAA) Risk Management Plan programs; • Add name, address, and phone number of the facility's parent company and/or the owner or operator of the facility; the Dunn and Bradstreet number of the parent company; and the e-mail address of the owner or operator; • Add the name and contact information for the facility emergency coordinator; • Add the name, title, phone number and e-mail address of the person responsible for completing the form; • Require the facility to indicate if it is subject to the emergency planning notification requirement of EPCRA §302 or the risk management planning requirements of CAA §112(r); • Expand the number of range codes for reporting the quantities of chemicals stored; • Require the form to specify whether the amount present on-site refers to pure chemicals or mixtures; and • List the types of on-site chemical storage rather than using storage codes. The proposed rule can be found in the August 8, 2011 Federal Register at: www.gpo.gov/fdsys.	The revisions are primarily of interest to facilities that store chemicals covered by MSDS in quantities of 10,000 pounds or more (less for specific extremely hazardous substances). States have the option under EPCRA §312 of requiring submission of a Tier I or a more detailed Tier II inventory form. Currently, New York State requires submission of the Tier II form.	EPA is accepting comments on the proposed revisions to the chemical inventory reporting regulations until **October 7, 2011.**

Other Recent Developments (Final)

AIR

FEDERAL: EPA established a **new format for materials previously submitted by New York and approved as revisions to New York's state implementation plan** (SIP). Under the CAA, each state must develop a SIP containing the control measures and strategies relied on to attain and maintain the national ambient air quality standards; once approved by EPA and incorporated into the SIP these measures are federally enforceable. Information about what items are included in New York's SIP is found at 40 CFR Part 52, subpart HH. With the recent rulemaking, EPA changed the way information about New York's SIP is presented, replacing a list of rulemakings and other approvals with a series of more user-friendly tables addressing: EPA approved state regulations; EPA approved source-specific requirements, such as individual reasonably available control technology determinations; and EPA approved nonregulatory and quasi-regulatory provisions, such as emission inventories, rate of progress plans and contingency measures. The final rule can be found in the July 15, 2011 Federal Register at: www.gpo.gov/fdsys.

Implications: The rule is of interest to anyone developing Title V permits or interested in determining the federal enforceability of state requirements.

CLIMATE CHANGE

FEDERAL: EPA **deferred for three years the application of the Prevention of Significant Deterioration (PSD) 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 delayed regulation of bioenergy and other biogenic sources to provide it with additional time to study their climate impacts. Examples of biogenic carbon dioxide (CO_2) emissions subject to the deferral include CO_2 from biological decomposition of waste in landfills, CO_2 from the combustion of biogas, and CO_2 from fermentation during ethanol production, among others. Under the rulemaking, stationary sources that combust biomass or otherwise emit biogenic CO_2 emissions and construct or modify during the deferral period will avoid the application of PSD to the biogenic CO_2 emissions resulting from those actions. The rule took effect July 20, 2011; it can be found in the Federal Register issued on the same day at: www.gpo.gov/fdsys.

Implications: The deferral is potentially of interest to bioenergy facilities and other facilities that emit significant quantities of CO_2 from biogenic sources.

FEDERAL: In the third part of a three-part rulemaking, **EPA adopted rules designed to mitigate the potential for misfueling engines with gasoline containing up to 15% ethanol** (otherwise known as E15). To expand use of ethanol, EPA recently issued a pair of waivers authorizing the use of E15 in model year 2001 and newer light-duty motor vehicles after concluding that the fuel will

not damage these engines or cause increased emissions. With the recent rulemaking, EPA finalized a rule designed to prevent the misfueling of vehicles and engines with E15. The rule, which is codified at 40 CFR Part 80, subpart N, prohibits drivers from dispensing E15 into vehicles and engines not covered by the partial waivers; it also requires dealers who choose to sell E15 to label their pumps to make clear that E15 fuel can only be dispensed into newer gasoline-fueled cars and light-duty trucks. Finally, the rule imposes certain recordkeeping requirements on refiners, distributors and retailers. The rule took effect **August 24, 2011**; it can be found in the July 25, 2011 Federal Register at: www.gpo.gov/fdsys.

Implications: The rule potentially affects gasoline retailers, refiners and distributors; however, E15 cannot be sold until EPA registers the fuel.

SOLID/HAZARDOUS WASTE

FEDERAL: EPA issued a ***National Strategy for Electronics Stewardship***, which contains recommendations for improving the design of electronic products and enhancing management of used or discarded electronics, with the goal of reducing the environmental impacts of electronic waste. The strategy was developed by a task force comprised of representatives from numerous federal agencies following public outreach. The recommendations arise under the following four headings: (1) build incentives for design of greener electronics and enhance science, research and technology development in the United States; (2) ensure that the federal government leads by example; (3) increase safe and effective management and handling of used electronics in the United States; and (4) reduce harm from United States exports of e-waste and improve safe handling of used electronics in developing countries. Of particular note, the strategy calls for the federal government to purchase comparatively green products and ensure that its equipment is properly reused or recycled. It also includes various recommendations intended to encourage/compel use of certified recyclers, i.e., recycling facilities that have obtained voluntary certifications under programs such as R2 and e-Stewards. The electronics recycling strategy can be found on EPA's website at: www.epa.gov/electronicsstrategy.

Implications: The strategy is primarily of interest to electronics manufacturers, distributors and recyclers.

NEW YORK STATE: DEC is pursuing an **enforcement initiative against companies that failed to submit their annual hazardous waste reports for 2010**. Under state regulations, large quantity hazardous waste generators must submit a Hazardous Waste Annual Report by March 1st documenting their hazardous waste generation activities for the previous year. In early August, DEC announced that over 99% of the generators required to submit annual reports had complied. For those that did not, DEC submitted a formal letter of complaint at the end of June 2011 giving them two options: (1) sign a consent order, file the report, and pay a penalty of up to $2,500; or (2) attend a prehearing conference in August to present their case for noncompliance. Generators electing the second option are potentially subject to a penalty of up to $15,000.

Implications: The initiative is potentially of interest to large quantity generators required to submit Hazardous Waste Annual Reports.

WATER

NEW YORK STATE: DEC issued a **Commissioner Policy entitled *Best Technology Available (BTA) for Cooling Water Intake Structures*** that identifies the measures required to minimize injury and death to fish and other aquatic organisms caused by impingement at a cooling water intake structure and/or entrainment through a cooling system. The policy applies to existing and proposed industrial facilities designed to withdraw 20 million gallons per day or more of water where at least 25 percent is used as contact or non-contact cooling water; smaller facilities will be addressed on a case-by-case basis using best professional judgment. The policy identifies dry closed-cycle cooling as the performance goal for new industrial facilities in marine and coastal districts and along the Hudson River up to the Federal Dam in Troy; by comparison, wet closed-cycle cooling is identified as the performance goal for other new facilities as well as for existing industrial facilities. In response to public comment, DEC revised the policy to allow existing facilities to propose alternative technologies to wet closed-cycle cooling that would result in equivalent reductions in impingement and entrainment. However, DEC rejected comments suggesting that it consider costs in setting BTA, arguing that the environmental impact to be addressed by BTA is limited to water quality and aquatic organisms. Other impacts must be addressed as part of the State Environmental Quality Review Act process. The policy can be found on DEC's website at: www.dec.ny.gov/animals/32847.html.

Implications: The policy is of interest primarily to facilities, such as utilities, that withdraw large quantities of surface water for cooling purposes.

OTHER

FEDERAL: The Pipeline and Hazardous Materials Safety Administration (PHMSA) adopted **miscellaneous amendments to the hazardous material transportation regulations to update and clarify certain regulatory requirements**. Among other things, the PHMSA added an exception from the package labeling requirements for "consolidation bins," which are used by motor carriers to consolidate and provide additional protection for shipments of small packages. In place of requiring full labels, the PHMSA is requiring bins to be marked generally as "hazardous materials" and meet various size, design and other requirements. Other changes include: (1) updating incorporations by reference; (2) revising the definition of "person" to include those who manufacture, repair or test packaging authorized for transportation of hazardous materials consistent with the federal hazardous materials transportation statute; (3) revising the rules governing labeling/placarding of intermediate bulk containers; (4) harmonizing the hazardous materials table with international standards; and (5) revising rules governing shipment of regulated medical waste, explosives, cylinders, and lab packs. The rule can be found in the July 20, 2011 Federal Register at: www.gpo.gov/fdsys.

Implications: The rule is potentially of interest to persons engaged in shipping hazardous materials.

NEW YORK STATE: DEC **issued a 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 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. The policy can be found on DEC's website at: www.dec.ny.gov/chemical/41822.html.

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

Other Recent Developments (Proposed)

AIR

FEDERAL: EPA **proposed to retain the existing secondary (welfare-based) national ambient air quality standards (NAAQS) for nitrogen and sulfur oxides pending further study** of the feasibility of issuing a joint standard based on the collective impacts 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 a policy assessment that proposed to link ambient air concentrations of NOx and SOx to the acid neutralizing capacity of surface waters through creation of an aquatic acidification index (AAI). After reviewing the policy assessment, EPA proposed to retain the existing secondary standards for NOx and SOx and adopt an additional set of secondary standards that are identical to the new 1-hour primary (health-based) standards adopted by EPA in 2010. To assemble the information needed to develop an appropriate multipollutant standard, EPA plans to conduct a five-year pilot test program to collect and analyze data from three to five locations in acid-sensitive ecoregions with the goal of evaluating the performance of established methods, data retrieval and reporting procedures used in the AAI equation. EPA is accepting comments on the proposed rule until **September 30, 2011**. The proposal can be found in the August 1, 2011 Federal Register at: www.gpo.gov/fdsys.

Implications: If adopted, the proposal delays for at least five years EPA's adoption of a secondary NAAQS addressing the combined impact of NOx and SOx on the environment.

FEDERAL/NEW YORK STATE: EPA proposed **criteria for determining whether use of onboard refueling vapor recovery (ORVR) equipment is widespread enough in the motor vehicle fleet to eliminate the need for gasoline stations to be equipped with Stage II vapor recovery systems**. Under the CAA, gasoline stations in serious, severe and extreme ozone nonattainment areas must be equipped with Stage II systems that capture vapor displaced from the vehicle fuel tank during gasoline dispensing and route it to the facility's storage tank. States may discontinue this requirement once ORVR systems are in widespread use among the nation's vehicle fleet. With the current rulemaking, EPA has proposed to find that ORVR will be in widespread use as of June 30, 2013, at which time states may elect to eliminate their Stage II requirements. EPA is accepting comments on the proposed rule until **September 13, 2011**. The proposal can be found in the July 15, 2011 Federal Register at: www.gpo.gov/fdsys. The proposal follows

DEC's issuance of an enforcement discretion directive in June 2011 announcing the Department's intent to waive enforcement of Stage II requirements at certain gasoline stations in the wake of evidence showing that ORVR is in widespread use in New York. The memorandum can be found on DEC's website at: www.dec.ny.gov/regulations/74990.html.

Implications: The proposed EPA rule and DEC enforcement discretion directive are potentially of interest to gasoline station owners in the New York City metropolitan region.

SOLID/HAZARDOUS WASTE

FEDERAL: EPA proposed a rule **conditionally excluding carbon dioxide streams being geologically sequestered from regulation as a hazardous waste**. One possible solution to climate change is geological sequestration of carbon dioxide (CO_2) – the process of injecting CO_2 from a source such as a coal-fired power plant through a well deep into the subsurface, trapping or "sequestering" the carbon. In December 2010, EPA created a new Class VI category of injection well under the Underground Injection Control program to address CO_2 injection wells. During the process of developing the new rule, questions arose about the potential applicability of the hazardous waste program to geological sequestration. With the current rulemaking, EPA is proposing to find that CO_2 streams that would otherwise qualify as a hazardous waste are not regulated under the Resource Conservation and Recovery Act provided they are managed in a Class VI well and meet certain other conditions. EPA is accepting comments on the proposed rule until **October 7, 2011**; it can be found in the August 8, 2011 Federal Register at: www.gpo.gov/fdsys.

Implications: The proposed rule is primarily of interest to coal-fired power plants and others interested in pursuing geological sequestration of CO_2.

WATER

NEW YORK STATE: DEC **made available for comment a draft *Total Maximum Daily Load (TMDL) Support Document for PCBs in Lake Ontario*** prior to submitting the document to EPA. The TMDL specifies the quantity of pollutants that can be discharged to a water body and still attain applicable water quality standards (WQS). Where a water body is impaired, DEC must determine the reductions needed to achieve the WQS and allocate those reductions between point and nonpoint sources. In the current draft TMDL document, DEC concluded that a more than 99% reduction in polychlorinated biphenyl (PCB) loading is needed for Lake Ontario to achieve the PCB WQS. However, the primary source of PCB-related impairments is existing contaminated sediments and atmospheric deposition, making achieving these reductions difficult. The TMDL allocates the PCB load reductions between point sources (wasteload allocation or WLA) and nonpoint sources (load allocation or LA), with a margin of safety. To achieve the WLA, DEC plans to set permit limits for those dischargers who, through monitoring, are shown to have PCBs in their discharges that can be controlled through implementation of a PCB minimization plan. The TMDL calls for achieving reductions in the LA through existing programs, such as the Lake Ontario Management Plan. DEC is accepting comments on the draft TMDL until **September 8, 2011** (extended from August 9, 2011). It can be found on DEC's website at: www.dec.ny.gov/chemical/23835.html.

Implications: The TMDL may be of interest to facilities that discharge to the Lake Ontario drainage basin.