



ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

September 9, 2011

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

Final Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<p>AIR</p> <p>FEDERAL National Ambient Air Quality Standards for Carbon Monoxide 40 CFR Parts 50, 53 and 58 76 Fed. Reg. 54294 (Aug. 31, 2011)</p>	<p>EPA reaffirmed 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 for people with preexisting heart disease. After reviewing the available information, EPA concluded that the current standards were requisite to protect public health with an adequate margin of safety. By comparison, the Clean Air Scientific Advisory Committee (CASAC), which reviewed the CO NAAQS, expressed a “preference” for a lower standard based on available epidemiological evidence. In rejecting the CASAC’s preference, the Administrator concluded that the available epidemiological studies did not justify the imposition of stricter standards. Consistent with the current rule, EPA elected not to require a secondary (welfare-based) standard for CO due to a lack of evidence showing that ambient CO directly affects public welfare.</p> <p>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 revised 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 gave regions the authority to require additional monitoring on a case-by-case basis, such as in areas affected by major CO sources.</p> <p>The rule can be found in the August 31, 2011 Federal Register at: www.gpo.gov/fdsys.</p>	<p>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.</p>	<p>The final rule takes effect October 31, 2011.</p>

Citation	Summary	Implications	Schedule/Notes
CLIMATE CHANGE			
<p>FEDERAL Confidentiality Determinations under Mandatory Greenhouse Gas Reporting Rule 40 CFR Part 98 76 Fed. Reg. 53057 (Aug. 25, 2011).</p>	<p>EPA deferred the reporting deadline for data elements that are used as inputs to emission equations under the mandatory greenhouse gas (GHG) reporting rule, which requires certain industrial sources and fuel and chemical suppliers to submit annual reports quantifying their GHG emissions. EPA adopted the deferral in the wake of concerns that the input data contain confidential business information (CBI). Under Section 114(c) of the Clean Air Act, “emission data” cannot be excluded from disclosure as CBI under 40 CFR Part 2. 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.</p> <p>With this rulemaking, EPA deferred the reporting deadline for some inputs to equations to March 31, 2013 and others to March 31, 2015. EPA adopted the bifurcated schedule after concluding that it needed more time to gather information and evaluate the potential impact of releasing certain types of equation inputs. The final rule includes a pair of tables listing the data elements subject to each deadline. The tables identify for each item the affected subpart, the rule citation, and the specific data elements covered by the extended deadline.</p> <p>The rule can be found in the August 25, 2011 Federal Register at: www.gpo.gov/fdsys.</p>	<p>The rule affects stationary sources required to submit mandatory GHG reports. Although facilities are not required to submit deferred input information, they must retain that data in their records in a form that is suitable for inspection and review.</p>	<p>The rule took effect September 9, 2011.</p> <p>Earlier this year, EPA issued a rule containing CBI determinations for information submitted to EPA as part of the mandatory GHG reporting process other than inputs to emission equations. <i>See</i> 76 Fed. Reg. 30782 (May 26, 2011).</p>

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
WATER			
NEW YORK STATE Guidance for Dam Hazard Classification DOW TOGS 3.1.5	<p>DEC's Division of Water made available for comment draft Technical and Operational Guidance Series (TOGS) 3.1.5, <i>Guidance for Dam Hazard Classification</i>, which provides guidance on the potential impacts associated with dam failure and their implications for the hazard classification of a dam. DEC's revised dam safety regulations, set forth at 6 NYCRR Part 673, impose design, inspection, emergency planning and other requirements on dams; the precise requirements that apply depend on the classification of the dam, which range from A (low hazard) to C (high hazard). TOGS 3.1.5 summarizes the procedure for assigning the letter designation to dams based on the potential hazards downstream of a dam failure. Following an overview of the rules governing hazard classification, the guidance summarizes the dam break assessment and inundation mapping process and identifies the criteria for proposing a hazard classification, including: loss of human life, secondary consequences and impairment of access to emergency services, damage to homes, main highways versus minor roads, railroads versus minor railroads, interruption of important utilities, substantial environmental damage, and downstream dams.</p> <p>The draft policy can be found on DEC's website at: www.dec.ny.gov/lands/4991.html.</p>	<p>The guidance is primarily of interest to dam owners/operators and engineers and municipalities with an interest in dam safety.</p>	<p>DEC is accepting comments on the draft TOGS until September 28, 2011.</p>

Citation	Summary	Implications	Schedule/Notes
OTHER			
<p>NEW YORK STATE Revised Draft Supplemental Generic Environmental Impact Statement for High-Volume Hydraulic Fracturing</p>	<p>DEC made available its revised draft supplemental generic environmental impact statement (SGEIS) summarizing the environmental impacts of high-volume hydraulic fracturing and the measures for mitigating those impacts. To extract natural gas from certain types of shale formations, drillers must inject large quantities of water and other agents deep into the rock, a process known as “high-volume hydraulic fracturing”. In 1992, DEC issued a GEIS setting forth the criteria for State Environmental Quality Review Act compliance for oil, gas and solution mining. DEC followed up in 2009 with a draft SGEIS addressing the unique issues associated with high-volume hydraulic fracturing. After an extensive review process, DEC published the revised draft SGEIS, which reflects comments and concerns raised since 2009. The additional recommendations for mitigating the impacts of high-volume hydraulic fracturing include:</p> <ul style="list-style-type: none"> • Prohibiting high-volume fracturing: (1) in or near the New York City and Syracuse watersheds; (2) on or near primary aquifers (i.e., highly productive aquifers used by major municipal water systems); (3) on certain state-owned land; (4) within 500 feet of a private water well or within 2,000 feet of a public drinking water supply well or reservoir; and (5) within a 100-year floodplain. • Requiring mandatory disclosure of hydraulic fracturing additives and evaluation of “eco-friendly” alternatives. • Requiring most wells to be constructed with an additional third casing to prevent gas migration into aquifers. • Requiring all on-site flowback water to be stored in watertight tanks within secondary containment and establishing a new stormwater general permit for gas drilling operations. • Requiring applicants to have DEC-approved plans for disposing of flowback water and production brine and establishing a system to track disposal of flowback water similar to that for medical waste. • Establishing air quality control, greenhouse gas, and habitat loss and wildlife impact mitigation measures. <p>Information about hydraulic fracturing can be found on DEC’s website at: www.dec.ny.gov/energy/46288.html.</p>	<p>The Marcellus Shale formation extends from the Catskills across New York’s Southern Tier and is believed to contain sizable quantities of natural gas. Several years ago, energy and land management companies began pursuing leases with landowners in the Marcellus Shale region. Concerns about the high-volume hydraulic fracturing process needed to extract gas from the shale led to the 2009 draft SGEIS. Since then, the controversy about hydraulic fracturing has grown, prompting DEC to revise the SGEIS to add additional restrictions on hydraulic fracturing not found in the 2009 draft SGEIS. DEC also plans to proposed amendments to its existing gas drilling regulations, using the SGEIS as the foundation for the regulations.</p> <p>Recently, various local governments have taken steps to restrict or ban hydraulic fracturing. The draft SGEIS requires that local governments receive written notice of all high-volume hydraulic fracturing in the locality; also, the applicant must identify whether the proposed location of the well conflicts with local land use laws, plans or policies.</p>	<p>DEC is accepting comments on the draft SGEIS until December 12, 2011. The Department plans to propose draft revisions to its gas drilling regulations in October 2011. Public hearings concerning the draft SGEIS and regulations will be held in November in New York City as well as four counties in the Marcellus Shale region.</p>

Other Recent Developments (Final)

AIR

FEDERAL: President Barack Obama announced that his administration was **suspending its current review of the 2008 national ambient air quality standards for ozone** of 0.75 parts per million (ppm), which were adopted by the Bush administration despite recommendations from the Clean Air Scientific Advisory Committee that the standards be set between 0.60 and 0.70 ppm. Upon taking office, the Obama administration announced plans to reconsider the standards; new ozone NAAQS based on the CASAC recommendations were proposed in early 2010. However, the business community and their allies in Congress argued strenuously that reducing the standards now would have a devastating impact on the economy and jobs. After several delays in finalizing the standards, President Obama issued a statement in early September declaring that “after careful consideration,” he had asked the EPA administrator to withdraw the revised ozone NAAQS, noting that “[w]ork is already underway to update a 2006 review of the standard in 2013.” Ultimately, he “did not support asking state and local governments to begin implementing a new standard that will soon be reconsidered.” In the wake of this announcement, environmental groups plan to revive their lawsuit challenging the 2008 standards. The announcement can be found on the White House website at: www.whitehouse.gov/the-press-office/2011/09/02/statement-president-ozone-national-ambient-air-quality-standards.

Implications: EPA will forego its pending review of the 2008 ozone NAAQS and focus on completing its periodic review of the standard, which is due in 2013.

WATER

NEW YORK STATE: In the wake of Hurricane Irene, DEC and the New York State Department of Environmental Protection (DEP) issued **emergency authorizations allowing work in or near water courses and wetlands** and waiving certain approval requirements. In the case of DEC, the authorization allows emergency work in certain counties to occur in navigable waters, streams and wetlands regulated under Articles 15 and 24 of the Environmental Conservation Law. The work must be performed in a minimally invasive manner, pursuant to conditions contained in the emergency authorization. Noncritical work is not allowed by this authorization. DEP, meanwhile, has declared that it will not enforce its watershed regulations in the West of the Hudson watershed for specific activities taken in response to Hurricane Irene provided the actions are immediately necessary to address an immediate threat to life, health, property, general welfare or natural resources and meet certain minimal requirements. The DEC emergency authorization can be found at: www.dec.ny.gov/public/76659.html. The DEP statement can be found at: www.nyc.gov/html/dep/html/news/policy_statement_related_to_hurricane_irene.shtml.

Implications: The notices are potentially of interest to municipalities and others completing storm-related repairs in certain regions of the state.

Other Recent Developments (Proposed)

AIR

FEDERAL: EPA proposed revised New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP) for the oil and natural gas sector. EPA's existing NSPS, which are set forth at 40 CFR Part 60, subparts KKK and LLL, address emissions of volatile organic compounds (VOCs) and sulfur dioxide from new, modified and reconstructed natural gas processing plants. Following a periodic review required under 42 USC § 7411(b), EPA proposed to adopt new standards to be set forth at 40 CFR Part 60, subpart OOO, addressing additional emissions from processing plants, as well as emissions from upstream production activities and transmission and storage facilities—sources that are not currently subject to the NSPS. Of particular note, EPA proposed operational standards for completion of hydraulically fractured gas wells and standards to reduce VOC emissions from gas-driven pneumatic devices, compressors, and storage vessels. EPA also proposed changes to the NESHAPs regulating hazardous air pollutant emissions associated with oil and natural gas production (40 CFR Part 63, subpart HH) and natural gas transmission and storage (40 CFR Part 63, subpart HHH), including: (1) establishing maximum achievable control technology standards for storage vessels under the oil and natural gas production NESHAP; (2) eliminating the exemption from NESHAP compliance for emissions during startup, shutdown and malfunctions; and (3) establishing an affirmative defense to civil penalties for exceedances occurring during malfunctions. As part of this rulemaking, EPA also announced that no changes were needed to incorporate recent technological developments; to address residual risk, EPA proposed to delete an alternative compliance option for glycol dehydrators that EPA believes reflects an unacceptable level of risk. EPA is accepting comments on the proposed rules until **October 24, 2011**; they can be found in the August 23, 2011 Federal Register at: www.gpo.gov/fdsys.

Implications: The proposed rules are primarily of interest to companies engaged in oil and natural gas extraction and natural gas transmission and storage.

CLIMATE CHANGE

NEW YORK STATE: DEC is hosting a pair of meetings relating to review of the **Regional Greenhouse Gas Initiative (RGGI)** and an economic analysis of a planned **low carbon fuels program** (otherwise referred to as a clean fuels standard or CFS). The RGGI established a multistate cap-and-trade program limiting greenhouse gas emissions from power plants in the Northeast. Under the RGGI Memorandum of Understanding (MOU), the participating states committed to reviewing the program in 2012, addressing program success, impacts and operations, the need for additional reductions, and issues such as import and emissions leakage and offsets. The meeting, which is scheduled for September 26, 2011, is intended to gather information from stakeholders in preparation for the upcoming review. The member states of the RGGI, plus Pennsylvania, agreed in 2008 to develop a CFS to reduce the carbon concentration of fuels used in vehicles. An upcoming meeting, also scheduled for September 26, 2011, will provide stakeholders with an opportunity to comment on a recently prepared economic analysis of the CFS, which concluded that the standard will reduce reliance on foreign oil, reduce GHG emissions from the transportation sector, and protect consumers from price volatility in the global

oil market. Information about the RGGI meeting can be found at: www.dec.ny.gov/energy/rggi.html; information about the CFS meeting can be found at: www.dec.ny.gov/energy/76549.html.

Implications: The meetings are potentially of interest to utilities, fuel suppliers and others with an interest in climate change policy in New York.

WATER

NEW YORK STATE: DEC published a draft policy document, entitled *New York State Stormwater Management Design Manual 2010 Update Transition Policy*, to address problems arising during the transition to New York's new stormwater design manual. In 2010, DEC issued an updated version of its stormwater design manual that, among other things, requires projects to implement post-construction treatment practices designed to reduce the volume of runoff to mimic the pre-developed hydrology of the site. DEC's revised general permit for stormwater discharges from construction activity required permitted sites to begin using the new design manual six months from the final revision date (i.e., by March 2011). DEC later concluded, however, that this transition deadline failed adequately to address sites that had received local approvals based on earlier stormwater management designs. DEC's draft policy addresses this problem by allowing project sponsors that made certain submissions to local governments or other agencies prior to March 1, 2011 to obtain coverage under the stormwater general permit using a stormwater pollution prevention plan that was prepared in conformance with the 2008 version of the design manual, rather than the 2010 version. DEC is accepting comments on the draft policy until **September 16, 2011**; it can be found on DEC's website at: www.dec.ny.gov/chemical/41392.html.

Implications: The draft policy is primarily of interest to owners/operators of construction projects approved prior to March 2011.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

September 16, 2011: Deadline for submitting comments on DEC's draft *New York State Stormwater Management Design Manual 2010 Update Transition Policy*. See DEC's website at www.dec.ny.gov/chemical/41392.html for details.

September 20, 2011: Deadline for submitting comments on OSHA's proposed revisions to the employee injury/illness recordkeeping and reporting requirements. See the June 22, 2011 Federal Register at www.gpo.gov/fdsys for details.

September 26, 2011: Stakeholder meetings on RGGI program review and economic analysis of CFS to be held at DEC headquarters in Albany. See DEC's website at www.dec.ny.gov/energy/rggi.html and www.dec.ny.gov/energy/76549.html for details.

September 28, 2011: Deadline for submitting comments on DEC's TOGS 3.1.5, *Guidance for Dam Hazard Classification*. See DEC's website at www.dec.ny.gov/lands/4991.html for details.

September 30, 2011: Deadline for submitting comments on EPA's decision to retain existing secondary standards for SO₂ and NO₂ pending further study. See the August 1, 2011 Federal Register at www.gpo.gov/fdsys for details.

September 30, 2011: Deadline for submitting data in conjunction with DEC's development of its list of impaired waters under CWA § 303(d). Information about the assessment process can be found on DEC's website at www.dec.ny.gov/chemical/23852.html.

October 7, 2011: Deadline for submitting comments on EPA's revised EPCRA Hazardous Chemical Inventory reporting regulations. See the August 8, 2011 Federal Register at www.gpo.gov/fdsys for details.

October 20, 2011: Deadline for submitting comments on EPA's proposed revisions to the definition of solid waste under the hazardous waste regulations (extended from September 20, 2011). See the July 22, 2011 Federal Register at www.gpo.gov/fdsys for details.

October 24, 2011: Deadline for submitting comments on EPA's revised NSPS and NESHAPs for the oil and natural gas sector. See the August 23, 2011 Federal Register at www.gpo.gov/fdsys for details.

December 12, 2011: Deadline for submitting comments on DEC's revised draft high volume hydraulic fracturing SGEIS. See DEC's website at www.dec.ny.gov/energy/46288.html for details.