



ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

October 7, 2011

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Final Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<p>AIR</p> <p>NEW YORK STATE Rule Implementing Requirements for Greenhouse Gases and Fine Particulate Matter under New Source Review Program 6 NYCRR Parts 200, 201, and 231</p>	<p>DEC revised its New Source Review (NSR) regulations to incorporate recent EPA rules relating to greenhouse gases (GHG) and fine particulate (PM_{2.5}) after adopting a series of emergency rules implementing the changes. With respect to GHGs, the revisions incorporate EPA’s GHG “tailoring rule,” which creates “tailored” Prevention of Significant Deterioration (PSD) applicability thresholds to address the fact that GHGs are emitted in significantly greater quantities than other PSD pollutants. Because the definition of major source under the Title V operating permit program is linked to the PSD program, DEC also revised 6 NYCRR Part 201 to incorporate the new GHG thresholds and make other necessary revisions. Key GHG-related changes include: (1) revising the definition of major stationary source to include sources that have the potential to emit 100 tons per year (tpy) or more of GHGs and 100,000 tpy or more of carbon dioxide equivalent (CO₂e); (2) adding a definition of greenhouse gases that identifies the six pollutants regulated as GHGs and the thresholds and timeframes for implementing PSD; and (3) adding a definition of global warming potential and including a table identifying values for calculating CO₂e.</p> <p>As part of the recent rulemaking, DEC also revised 6 NYCRR Part 231 to incorporate a pair of EPA rules implementing NSR for new and modified sources of PM_{2.5}. Major changes include: (1) establishing emission offset requirements for PM_{2.5}, including appropriate interpollutant offset ratios for the PM_{2.5} precursors sulfur dioxide (SO₂) and nitrogen oxides (NOx); (2) clarifying the rules governing use of SO₂ and NOx as emission reduction credits for PM_{2.5}; and (3) establishing PM_{2.5} increments (maximum allowable increase over baseline), de minimis monitoring levels (increase below which no monitoring is required), and significant impact levels (level above which an emission increase is considered to cause or contribute to a violation of a national ambient air quality standard).</p> <p>The rule can be found on DEC’s website at: www.dec.ny.gov/regulations/proregulations.html.</p>	<p>The rule is potentially of interest to new and modified major facilities that could trigger PSD. Among other things, it enables DEC to implement the PSD program for GHGs and PM_{2.5}. It also contains various editorial changes intended to clarify the PSD and nonattainment NSR rules.</p>	<p>The rule takes effect October 15, 2011 (30 days after filing). DEC issued a new emergency rule to ensure that the PM_{2.5} and GHG provisions remain in effect in the interim.</p>

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
WATER			
<p>NEW YORK STATE SPDES General Permit for Stormwater Discharges from High Volume Hydraulic Fracturing Operations</p>	<p>As part of its initiative to address high-volume hydraulic fracturing (HVHF), DEC made available for comment a draft State Pollutant Discharge Elimination System (SPDES) General Permit for Stormwater Discharges from High-Volume Hydraulic Fracturing operations. HVHF operations occur in three phases, each of which is subject to different permit conditions. These conditions derive from the existing construction general permit (CGP) and multi-sector general permit (MSGP) for stormwater discharges from industrial activities as well as from mitigation measures contained in the draft supplemental generic environmental impact statement (SGEIS) currently under review. Requirements for each HVHF phase are summarized below:</p> <ul style="list-style-type: none"> • Construction phase (access road and well pad construction). The requirements applicable during this phase are consistent with the CGP and include: regular site inspections by qualified inspectors; timely implementation of corrective action when necessary; and certification that the construction phase is complete once the site has been stabilized and stormwater controlled. The permit also includes narrative effluent limit guidelines published by EPA in 2009 relating to erosion and sediment controls, soil stabilization, construction site dewatering, and pollution prevention, among other requirements. • HVHF phase (actual well drilling activities, including use and storage of chemicals and other materials, equipment use and storage, etc.). The requirements applicable during this phase depend on the activities at the site and derive both from the SGEIS (identification of fluid additives, wastewater treatment and disposal plan, etc.) and the MSGP (secondary containment, corrective actions, good housekeeping, etc.). They also include structural and nonstructural best management practices, as well as inspection, maintenance and monitoring requirements. • Production phase (natural gas extracted from well). This phase involves a reduced level of activity; as a result, the inspection, monitoring and other similar requirements are significantly reduced. <p>The draft general permit and related documents can be found on DEC's website at: www.dec.ny.gov/permits/77251.html.</p>	<p>Once the general permit is issued, owners/operators of HVHF drilling operations will be required to obtain an individual SPDES permit for stormwater discharges from the drilling site or seek coverage under the draft general permit by submitting a notice of intent form to DEC and preparing a stormwater pollution prevention plan (SWPPP). The owner/operator must comply with both the general permit and the site-specific SWPPP.</p> <p>Consistent with the SGEIS and other stormwater general permits, numerous activities are ineligible for coverage under the general permit.</p>	<p>DEC is accepting comments on the draft high-volume hydraulic fracturing SGEIS, regulations and SPDES general permit until December 12, 2011. Public hearings on these HVHF initiatives have been scheduled in the second half of November at the following locations: Dansville, Binghamton, Loch Sheldrake, and New York City.</p>

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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 proposes to issue a general permit entitled <i>SPDES General Permit for Point Source Discharges to Surface Waters of New York from Pesticide Applications</i>. This 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: (1) minimizing discharges; (2) preparing a pesticide discharge management plan; (3) visual monitoring and assessments; (4) implementation of corrective measures and incident reporting requirements; (5) records maintenance and retention; and (6) standard permit conditions. In the recent notice, DEC announced plans to issue the new SPDES general permit with a revision that excludes from the permitting requirement aquatic pesticide applications to ponds of one acre or less in size that have no outlet to surface water and lie wholly within privately-owned lands. DEC is accepting comments on the proposed small pond exclusion only.</p> <p>The 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 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 court decisions 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 new exemption for small ponds under the pesticide general permit until October 28, 2011.</p>
<p>NEW YORK STATE Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity GP-0-11-009</p>	<p>DEC is proposing to renew the SPDES Multi-Sector General Permit (MSGP) for Stormwater Discharges Associated with Industrial Activity for an additional six months to September 30, 2012 to provide the Department with additional time to complete its review of the permit. This permit covers new and existing discharges of stormwater from facilities in certain industrial categories. Facilities in those categories must notify DEC that they intend to be covered by the general permit and prepare a stormwater pollution prevention plan. The renewed permit includes revisions to implement the new deadline and updated web addresses and contact information.</p> <p>The permit and related materials can be found on DEC’s website at: www.dec.ny.gov/chemical/41392.html.</p>	<p>The permit affects industrial facilities in specific source categories that discharge stormwater through a point source and are not covered by an individual SPDES permit.</p>	<p>DEC is accepting comments on the proposed extension until October 28, 2011.</p>

Citation	Summary	Implications	Schedule/Notes
OTHER			
<p>NEW YORK STATE Regulations Addressing High-Volume Hydraulic Fracturing 6 NYCRR Parts 52, 190, 550-560, and 750</p>	<p>Several weeks after making its revised draft supplemental generic environmental impact statement (SGEIS) available for comment, DEC proposed to revise state regulations to address the unique issues associated with high-volume hydraulic fracturing (HVHF). The state’s oil, gas and solution mining regulations, which are contained in 6 NYCRR Parts 550-559, require permits, establish well spacing and setback standards, mandate appropriate drilling practices, establish procedures for well plugging and abandonment, and set financial security requirements. Proposed changes include:</p> <ul style="list-style-type: none"> • Adding definitions of hydraulic fracturing, true measured depth, true vertical depth, well spud, and workover. • Eliminating a cap on the financial security required to plug deep wells. • Extending the term of a permit to drill, deepen, plug back or convert a well from six months to two years and authorizing reissuance of permits to another operator at previously permitted locations. • Modernizing the regulations to make them consistent with recent statutory changes relating to well spacing. • Imposing additional reporting/recordkeeping requirements relating to disposal of drill cuttings and preparation of interim completion reports addressing lengthy gaps in drilling operations. • Increasing minimum requirements for plugging. <p>DEC also proposed to add a new Part 560 to specifically address HVHF – defined as well fracturing that involves more than 300,000 gallons of water for fracturing operations. The new rule codifies many of the mitigation measures contained in the SGEIS, including: setbacks; the permit application process (disclosure of chemical additives, detailed mapping, etc.); well testing, recordkeeping and reporting; and well construction and operation.</p> <p>As part of the same rulemaking, DEC also proposed changes to 6 NYCRR Part 750, including adding a new subpart 750-3 containing the wastewater permitting requirements applicable to HVHF operations (see related article above). Finally, DEC proposed to revise state land regulations to incorporate prohibitions on HVHF operations on state lands.</p> <p>The proposed regulations can be found on DEC’s website at: www.dec.ny.gov/regulations/77353.html.</p>	<p>DEC originally planned to implement the special requirements applicable to HVHF operations almost exclusively through mitigation measures developed as part of the SGEIS process. Under this approach, drillers seeking a HVHF permit from DEC could avoid individual SEQRA review of their project by implementing the mitigation measures set forth in the SGEIS. In the wake of growing controversy about HVHF in New York, DEC apparently became concerned that compliance with the mitigation measures in the SGEIS was not enough and so proposed to incorporate key mitigation measures into its oil, gas and solution mining regulations and wastewater permitting rules, among others.</p>	<p>DEC is accepting comments on the draft high-volume hydraulic fracturing SGEIS, regulations and SPDES general permit until December 12, 2011. Public hearings on these HVHF initiatives have been scheduled in the second half of November at the following locations: Dansville, Binghamton, Loch Sheldrake, and New York City.</p>

Other Recent Developments (Final)

AIR

NEW YORK STATE: DEC revised 6 NYCRR 200.10 to **incorporate new National Emission Standards for Hazardous Air Pollutants** (NESHAP) contained in the 2009 Code of Federal Regulations into New York's regulations; as part of the rulemaking, DEC also updated references to other federal programs, including the Prevention of Significant Deterioration permitting program. The rule provides DEC with the authority to implement and enforce the NESHAPs included in the rulemaking, although EPA retains its own enforcement authority. The rule can be found on DEC's website at: www.dec.ny.gov/regulations/propregulations.html.

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

CLIMATE CHANGE

FEDERAL: EPA and the National Highway Traffic Safety Administration (NHTSA) **established national greenhouse gas emission standards and improved fuel efficiency standards for heavy-duty trucks and buses**. The standards apply to vehicles in the following categories: (1) combination tractors (i.e., semi trucks); (2) heavy-duty pickup trucks and vans (i.e., conventional vehicles that are too large to be subject to the standards for light-duty vehicles and trucks); and (3) vocational vehicles (e.g., delivery, refuse, utility, dump, and cement trucks; transit, shuttle and school buses; emergency vehicles; and tow trucks). In general, the standards differ among vehicle categories depending on the size and configuration of the vehicle. To achieve the necessary reductions, the regulations anticipate that manufacturers will implement engine and transmission upgrades, aerodynamic improvements, and tire rolling resistance improvements. EPA's final GHG emission standards will begin in model year 2014; to meet timeframes specified in the authorizing statute, the final fuel consumption standards will be voluntary in 2014 and 2015, becoming mandatory in 2016 (2017 for diesel engine standards). Commercial trailers are not regulated in this phase of the program. According to EPA, the savings associated with reduced fuel use will outweigh the costs of the technology improvements, particularly for semi trucks, which typically are driven many miles each year. The new standards can be found in the September 15, 2011 Federal Register at: www.gpo.gov/fdsys.

Implications: The rules are primarily of interest to heavy-duty vehicle and engine manufacturers and importers and to potential purchasers of vehicles/engines.

OTHER

FEDERAL: EPA issued *Plan EJ 2014*, a three-year plan outlining EPA's strategy for advancing environmental justice (EJ) – defined as “the fair treatment and meaningful involvement of all peoples, regardless of race, color, national origin, or income with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies.” The Plan aims to protect the environment and health in communities overburdened by pollution, empower communities to take action to improve their health and the environment, and establish partnerships with local, state, tribal and federal governments and organizations to promote sustainable

communities. The Plan has three major sections: (1) Cross-Agency Focus Areas (addressing issues or functions relevant across EPA, such as incorporating EJ into rulemaking, considering EJ in permitting, advancing EJ through compliance and enforcement, supporting community-based action programs, and fostering administration-wide action on EJ); (2) Tools Development Areas (focusing on developing the methods, mechanisms and systems to support EJ in the areas of science, law, information and resources); and (3) Program Initiatives (focusing on EJ issues arising under specific EPA programs). For each area, the plan identifies the goal(s) of the particular initiative and the strategies/activities to be implemented to achieve the goal. The *Plan EJ 2014* document can be found on EPA's website at: www.epa.gov/compliance/environmentaljustice/plan-ej/index.html.

Implications: The Plan is of general interest to anyone doing business with EPA.

Other Recent Developments (Proposed)

AIR

FEDERAL: EPA made available for comment a **draft document entitled *Guidance for 1-Hour SO₂ NAAQS SIP Submissions, which provides guidance to states on how to prepare a state implementation plan (SIP) required to implement the 2010 revisions to the national ambient air quality standards (NAAQS) for sulfur dioxide (SO₂)***. Among other things, the document: (1) specifies what elements must be included in any SIP required by CAA § 110(a)(1), 42 USC § 7410(a)(1), to provide for the implementation, maintenance and enforcement of any new NAAQS regardless of the area's attainment status, including preparation of an attainment emissions inventory, control strategy, maintenance demonstration, contingency plan, and plan for verification of continued attainment of the standard; (2) specifies the additional elements required for areas designated nonattainment, including nonattainment new source review and conformity demonstrations; and (3) provides guidance on transitioning from the existing to the revised SO₂ NAAQS and redesignating areas from nonattainment to attainment. It also includes as an appendix detailed guidance on applying dispersion models to support the SIP process under the new SO₂ standard. EPA intends to complete designation of SO₂ areas under the 2010 standard by June 2012 using available ambient monitoring data and dispersion modeling results; states with areas designated nonattainment must submit nonattainment SIPs to EPA within 18 months of designation. Owing to a lack of monitoring and refined modeling data, EPA expects that many areas will be designated unclassifiable and so will be required to submit plans to EPA by June 2013 consistent with the guidelines outlined in item (1) above. EPA is accepting comments on the draft guidance until **November 2, 2011**; it can be found on EPA's website at: www.epa.gov/airquality/sulfurdioxide/implement.html.

Implications: The guidance is primarily of interest to DEC, which is responsible for preparing and submitting New York's SIP.

OTHER

NEW YORK STATE: DEC is **accepting applications for its New York Environmental Leaders (NYEL) program**, which seeks to recognize and provide incentives to organizations that demonstrate use of sustainable business practices or pollution prevention practices that exceed environmental compliance. Incentives available to participants include: an invitation to apply for a summer

intern to help with a “beyond compliance” environmental project; access to a specially designated DEC contact to facilitate communication between DEC and the NYEL member; and use of the NYEL logo. The program consists of two tiers: (1) a leadership tier (open to organizations with a track record of environmental leadership); and (2) an entry tier. Applications for entry into the program this year must be submitted to DEC by **October 31, 2011**. NYEL information and application forms can be found on DEC’s website at: www.dec.ny.gov/chemical/939.html.

Implications: This announcement is potentially of interest to companies seeking state recognition for their environmental compliance efforts.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

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.

October 28, 2011: Deadline for submitting comments on DEC’s proposal to issue its SPDES General Permit for Point Source Discharges to Surface Waters of New York State from Pesticide Applications with an exception for certain small ponds. See DEC’s website at www.dec.ny.gov/chemical/70489.html for details.

October 28, 2011: Deadline for submitting comments on DEC’s proposed extension of its existing SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity through September 30, 2012. See DEC’s website at www.dec.ny.gov/chemical/41392.html for details.

October 28, 2011: Deadline for submitting comments on OSHA’s proposed revisions to the employee injury/illness recordkeeping and reporting requirements (extended from September 20, 2011). See the June 22, 2011 Federal Register at www.gpo.gov/fdsys for details.

October 31, 2011: Deadline for submitting application to participate in DEC's New York Environmental Leaders program. See DEC's website at www.dec.ny.gov/chemical/939.html for details.

November 2, 2011: Deadline for submitting comments on EPA's draft *Guidance for 1-Hour SO₂ NAAQS SIP Submissions*. See EPA's website at www.epa.gov/airquality/sulfurdioxide/implement.html for details.

November 4, 2011: Deadline for submitting comments on DEC's TOGS 3.1.5, *Guidance for Dam Hazard Classification* (extended from September 28, 2011). See DEC's website at www.dec.ny.gov/lands/4991.html for details.

December 12, 2011: Deadline for submitting comments on DEC's revised draft high volume hydraulic fracturing SGEIS, general stormwater permit, and regulations. See DEC's website at www.dec.ny.gov/energy/75370.html for details.