



ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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Final Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
AIR			
FEDERAL Designation of Lead Nonattainment Areas 40 CFR Part 81 76 Fed. Reg. 72097 (Nov. 22, 2011)	<p>EPA identified five additional areas of the country as nonattainment under the revised national ambient air quality standard (NAAQS) for lead, for a total of 21 lead nonattainment areas nationwide. In 2008, EPA revised the lead NAAQS downward from 1.5 to 0.15 micrograms per cubic meter and established new requirements for lead monitoring networks. After designating 16 areas as nonattainment under the new standards in 2010, EPA completed its review of the additional monitoring data collected using the new monitoring network and identified five additional lead nonattainment areas. States with these newly identified areas must submit revised state implementation plans to EPA by June 30, 2013 identifying the measures they plan to implement to reduce lead emissions and achieve the NAAQS. Because lead emissions are relatively heavy, most lead nonattainment areas are located in the vicinity of large lead sources, such as secondary lead smelters.</p> <p>The new lead designations can be found in the November 22, 2011 Federal Register at: www.gpo.gov/fdsys.</p>	<p>None of the 21 areas designated nonattainment for lead is located in New York. However, a previously established monitor in Orange County recorded data in 2011 that exceed the standard. The data must be quality assured and appropriate boundaries defined before the area can be designated nonattainment. In the interim, Orange County has been designated unclassifiable for lead.</p>	<p>The rule takes effect December 31, 2011.</p>

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AIR			
<p>FEDERAL Residual Risk/Periodic Review for Shipbuilding and Ship Repair (Surface Coating) and Wood Furniture Manufacturing Standards 40 CFR Part 63, subparts II and JJ 76 Fed. Reg. 72050 (Nov. 21, 2011)</p>	<p>EPA revised the major source National Emission Standards for Hazardous Air Pollutants (NESHAPs) for shipbuilding and ship repair and wood furniture manufacturing following a residual risk and periodic technology review. Under Clean Air Act § 112, 42 USC § 7412, EPA must assess whether any residual risk remains after imposing technology-based standards and revise them as necessary; EPA also must conduct a periodic review of the underlying technology to confirm that it remains current. Following that review, EPA reached the following conclusions:</p> <ul style="list-style-type: none"> • Shipbuilding and ship repair (surface coating). EPA determined that the existing maximum achievable control technology (MACT) standard provides an ample margin of safety to protect public health and prevent adverse environmental effects; accordingly, no change is necessary to address residual risk. EPA also concluded that there have been no technological developments that justify stricter standards. • Wood furniture manufacturing. Following a residual risk assessment, EPA decided to limit use of formaldehyde in coatings and contact adhesives by requiring facilities to either: (1) limit formaldehyde emissions to 400 pounds per rolling 12-month period; or (2) limit the formaldehyde content in coatings and contact adhesives to 1 percent by weight. According to EPA, this change will significantly reduce the estimated lifetime individual cancer risk to the most exposed individual while imposing no or minimal additional costs on the facility. Following the periodic technology review, EPA amended the MACT standard to prohibit the use of conventional air spray guns unless they are routed to a control device. EPA adopted the change after concluding that such guns have already been replaced at most facilities by more efficient air assisted airless spray guns. <p>Consistent with other recent NESHAP rulemakings, EPA revised the rules to require facilities to comply with MACT standards at all times, including during startup and shutdown. With respect to malfunctions, EPA adopted an affirmative defense to civil penalties, which is available to facilities that can show that the event causing the exceedance, in fact, met the definition of malfunction and that the facility took all necessary steps to mitigate and correct it.</p> <p>The rulemaking can be found in the November 21, 2011 Federal Register at: www.gpo.gov/fdsys.</p>	<p>The rulemaking is primarily of interest to major sources regulated under the shipbuilding and ship repair and wood furniture manufacturing NESHAPs.</p> <p>EPA revised the SSM requirements in the wake of a court decision that vacated EPA’s general SSM exemption contained in 40 CFR Part 63, subpart A. As it reviews MACT standards, EPA is revising SSM provisions to conform to the court’s ruling. With respect to startups and shutdowns, EPA is either establishing special emission limits applicable during startup and shutdown or requiring compliance with a single set of emission limits at all times. EPA is proposing the affirmative defense for malfunctions in recognition of the fact that such events are, by definition, unexpected, making compliance with emission limits difficult.</p>	<p>The rule took effect November 21, 2011.</p>

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WATER			
<p>NEW YORK STATE Public Water System Regulations 10 NYCRR subpart 5-1</p>	<p>The New York State Department of Health (DOH) amended its public water system (PWS) regulations to implement EPA’s 2006 Groundwater Rule (GWR), which was adopted to reduce the risk of exposure to fecal contamination in PWS that use groundwater.</p> <p>Changes to 10 NYCRR subpart 5-1 include:</p> <ul style="list-style-type: none"> • For PWS using chemical disinfection, clarifying the levels of residual disinfection concentration that must be maintained. • Requiring all PWS to develop and implement a monitoring plan that includes the requirements specified in subpart 5-1; this plan must be completed by January 31, 2012. • Expanding requirements for the state to conduct PWS inspections (i.e., sanitary surveys). • Revising Table 6, Microbiological Contaminants Maximum Contaminant Level (MCL)/Treatment Technique (TT) Violation Determination, to identify as a violation the presence of fecal contamination in raw water. • Adding new Table 11B listing the actions required when microbial contamination is detected in routine or follow-up monitoring samples. • Revising Table 13, Required Notifications, to include additional notifications required when a source tests positive for total coliform. • Revising Table 15, Entry Point Disinfectant Monitoring Frequency for Systems Using Chemical Disinfection, to incorporate changes in residual measurement required by the GWR. • Authorizing electronic daily operating records. • Adding the following new defined terms: -log treatment, consecutive system, corrective action, fecal indicator, groundwater system, process compliance monitoring, sanitary survey, significant deficiency, treatment technique, and wholesale system. <p>The regulation can be found on the DOH’s website at: www.health.state.ny.us/regulations.</p>	<p>The regulations potentially affect all “public water systems” in New York State, a term that covers community and noncommunity systems that provide water to the public for human consumption and that consist of five service connections or regularly serve at least 25 people daily 60 or more days a year. The requirements of the federal GWR took effect December 1, 2009. DOH revised its regulations to incorporate the GWR in order to obtain authority to implement the rule.</p>	<p>The regulations took effect November 9, 2011.</p>

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<p>AIR</p> <p>FEDERAL Residual Risk/Periodic Review for Mineral Wool Production and Wool Fiberglass Manufacturing and Ferroalloys Production 40 CFR Part 63, subparts DDD and XXX 76 Fed. Reg. 72770 (Nov. 25, 2011); 76 Fed. Reg. 72508 (Nov. 23, 2011)</p>	<p>EPA proposed changes to the National Emission Standards for Hazardous Air Pollutants for mineral wool production and wool fiberglass manufacturing (40 CFR Part 63, subpart DDD) and ferroalloys production (40 CFR Part 63, subpart XXX) following a residual risk and periodic technology review. Under Clean Air Act § 112, 42 USC § 7412, EPA must assess whether any residual risk remains after imposing technology-based standards and revise them as necessary; EPA also must conduct a periodic review of the underlying technology to confirm that it remains current. Following that review, EPA proposed major changes to the NESHAPs for both source categories. Among other things, EPA proposed to: add emission limits for various pollutants not covered by the current standards; modify testing, monitoring, notification, reporting and recordkeeping requirements; and revise the rules relating to startups, shutdowns and malfunctions consistent with the changes to the shipbuilding and wood furniture manufacturing NESHAPs discussed above.</p> <p>The rules can be found in the November 23, 2011 (subpart XXX) and November 25, 2011 (subpart DDD) Federal Registers at: www.gpo.gov/fdsys.</p>	<p>The revisions to subpart DDD are primarily of interest to manufacturers engaged in mineral wool production (production of mineral wool fiber from slag, rock or other materials, excluding sand or glass) and wool fiberglass manufacturing (production of wool fiberglass on a rotary spin manufacturing line producing bonded building insulation or on a flame attenuation line producing bonded pipe insulation and bonded heavy-density products). EPA estimates that there are approximately seven mineral wool facilities and 29 wool fiberglass facilities operating nationwide.</p> <p>The revisions to subpart XXX are primarily of interest to ferroalloys production facilities, of which there are currently two subject to the standards.</p>	<p>EPA is accepting comments on the subpart XXX ferroalloys production standards until January 9, 2012.</p> <p>EPA is accepting comments on the subpart DDD mineral wool production and wool fiberglass standards until January 24, 2012.</p>

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BULK STORAGE			
<p>FEDERAL Underground Storage Tank Regulations 40 CFR Parts 280 and 281 76 Fed. Reg. 71708 (Nov. 18, 2011)</p>	<p>EPA proposed major revisions to its underground storage tank (UST) regulations to implement the requirements of the Energy Policy Act (EPA) of 2005 and revise/update various other UST requirements. Changes proposed to implement the EPA Act include:</p> <ul style="list-style-type: none"> • Training. Tank owners/operators must obtain training tailored to three classes of tank operators – Class A (responsible for UST system), Class B (responsible for implementing UST requirements on a day-to-day basis), and Class C (responsible for initially addressing spills or releases). The training must be documented. • Secondary containment. New or replaced tanks and piping installed after the effective date of the regulation must be equipped with secondary containment (including interstitial monitoring). Under-dispenser containment is required beneath new dispenser systems. <p>Additional changes to the UST regulations proposed by EPA include:</p> <ul style="list-style-type: none"> • Operation and maintenance. EPA proposed numerous additional operation and maintenance requirements, including: (1) periodic walkthrough inspections (at least once every 30 days); (2) annual tests of spill prevention equipment and electronic and mechanical components of release detection equipment; and (3) tests of overflow prevention equipment and secondary containment areas using interstitial monitors at least once every three years. In general, the tests must be conducted according to manufacturer requirements, national codes, or comparably stringent requirements adopted by the implementing agency. • Deferrals. EPA proposed to eliminate deferrals for the following tanks/tank systems: UST systems storing fuel solely for use by emergency power generators; currently deferred airport hydrant fuel distribution systems; and UST systems with field-constructed tanks. Once the rule takes effect, these tanks will be regulated under the UST program and will no longer be subject to spill prevention, control and countermeasure plan requirements. • Other changes. EPA proposed other changes relating to: overflow prevention equipment requirements; internal linings that fail the periodic lining inspection and cannot be repaired; notifications; and alternative fuels and compatibility, among other subjects. <p>The proposed regulation can be found in the November 18, 2011 Federal Register at: www.gpo.gov/fdsys.</p>	<p>Once adopted, the proposed revisions to the federal UST regulations, set forth at 40 CFR Part 280, will apply in Indian country and in states and territories with programs that have not been approved by EPA. States seeking to maintain EPA approval of their UST programs must revise their UST regulations consistent with state program approval (SPA) requirements set forth in 40 CFR Part 281. These SPA requirements are consistent with, but less prescriptive than, the UST regulations contained in Part 280.</p> <p>Currently, New York’s UST program is not approved by EPA. Owners/operators must therefore comply both with the federal UST regulations and with the state’s petroleum and chemical bulk storage (PBS/CBS) regulations, contained in 6 NYCRR Parts 595-599 and 610-612. In 2009, the Legislature amended the PBS and CBS statutes to address the EPA Act and make other major changes relating to PBS applicability and the definition of petroleum. DEC currently is revising the PBS and CBS regulations to implement the necessary changes.</p>	<p>EPA is accepting comments on the proposed rule until February 16, 2012.</p>

Citation	Summary	Implications	Schedule/Notes
WATER			
<p>NEW YORK STATE Water Withdrawal Permits 6 NYCRR Part 601 and related provisions</p>	<p>DEC proposed regulations implementing a 2011 law establishing a comprehensive water withdrawal permit program. Consistent with the authorizing statute, the regulations require any person with the capacity to withdraw at least 100,000 gallons per day (gpd) from the state’s ground or surface waters to get a permit from DEC; it also applies to other water withdrawal-related activities, including, but not limited to, the taking, condemnation, or acquisition of land for development or protection of sources of water supply and the interbasin diversion of water. Key requirements include:</p> <ul style="list-style-type: none"> • Initial permit application. Assuming a facility has complied with existing water withdrawal reporting requirements, the initial permit application for non-public water systems must be submitted to DEC in accordance with a five-year schedule based on system capacity, with the first applications for the largest systems (100 million gpd or more) due February 15, 2013. Facilities that failed to report water withdrawals as of February 15, 2012 must submit a permit application by February 15, 2013. Existing public water supply permits in effect as of February 15, 2012 will remain in effect. • Special registration requirements. Individuals withdrawing water for agricultural purposes or who are engaging in interbasin transfers must comply with special registration requirements. • Application requirements. The regulations include detailed requirements for completing the application process, specifying what information and exhibits must be included with the application as well as the procedure for processing the application and issuing the requested permit. The regulations also specify the basic conditions applicable to all water withdrawal permits. • Annual reports. Facilities subject to permit or registration requirements must submit annual water withdrawal reports to DEC by March 31st beginning in 2013. The reports must contain basic information relating to water withdrawal activities, including information about water conservation and efficiency measures undertaken during the reporting period. <p>The proposed regulations can be found on DEC’s website at: www.dec.ny.gov/regulations/propregulations.html.</p>	<p>Currently, DEC only requires permits for water withdrawals by public water supply systems. The proposed regulations expand DEC’s permitting authority to include withdrawal of water for commercial, industrial and agricultural purposes, requiring facilities with the capacity to withdraw at least 100,000 gpd of water to obtain a withdrawal permit from DEC, subject to various exemptions. Existing public water supply system permits will remain in effect until the new permit program is fully implemented. Once the implementation process is complete, water withdrawal permits will no longer be required for small public water supply systems, (i.e., those below the 100,000 gpd threshold). Regardless, public water systems remain subject to New York State Department of Health regulations addressing drinking water safety. Special rules apply to water withdrawals for agricultural purposes or that involve interbasin diversions.</p>	<p>DEC is accepting comments on the proposed water withdrawal permit regulations until January 22, 2012.</p> <p>A public information meeting is scheduled for December 12, 2011 in Albany, with additional meetings scheduled in New Paltz and West Henrietta.</p>

Other Recent Developments (Final)

BULK STORAGE

FEDERAL: EPA adopted a final rule **extending the deadline for farms to amend and implement their spill prevention, control and countermeasure (SPCC) plans** to May 10, 2013. This final rule supersedes an earlier direct final rule and notice of proposed rulemaking that was the subject of adverse public comments. EPA revised the SPCC regulations in 2002 and has extended the deadline for complying with the new requirements numerous times since then. Currently, most facilities were required to amend and implement their SPCC plans by November 10, 2011. According to EPA, the extension of the compliance date for farms to May 10, 2013 is necessary because many farms were affected by flooding and other natural disasters in 2011; moreover, the sheer number of farms complicated EPA's efforts to reach out to farm owners/operators potentially affected by the rule. In light of these considerations, EPA concluded that farms needed additional time to come into compliance with the revised SPCC plan rule. The extension can be found in the November 22, 2011 Federal Register at: www.gpo.gov/fdsys.

Implications: The extension is primarily of interest to owners/operators of farms storing more than 1,320 gallons of oil aboveground (42,000 gallons underground).

WATER

FEDERAL: EPA announced its **final plan for studying the impact of hydraulic fracturing on drinking water**. 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. At the request of Congress, EPA agreed to study hydraulic fracturing, making a draft study plan available in March 2010 for review by the public and the agency's Science Advisory Board. The study will address the full lifespan of water in the hydraulic fracturing process, including acquisition, chemical mixing, fracturing, post-fracturing (including management of flowback), and treatment and disposal. Key elements of the study include: (1) evaluating data on hydraulic fracturing obtained from hydraulic fracturing service companies and oil and gas well operators as well as other publicly available data; (2) conducting five retrospective case studies addressing reported instances of drinking water contamination in areas where hydraulic fracturing has occurred; (3) conducting two prospective case studies assessing new hydraulic fracturing activities; (4) using computer modeling to evaluate hypothetical hydraulic fracturing scenarios; and (5) conducting limited laboratory studies, primarily in conjunction with the case studies. A report addressing the retrospective components of the study will be completed in 2012. An additional report synthesizing the results of the long-term components of the project will be completed in 2014. The study plan can be found on EPA's website at: www.epa.gov/hydraulicfracturing.

Implications: The study plan is focused primarily on hydraulic fracturing in shale formations, such as the Marcellus shale in New York; however, portions of the study will also provide information on hydraulic fracturing in coalbed methane and tight sand reservoirs.

OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: The Occupational Safety and Health Administration (OSHA) issued **an instruction describing its policies and procedures for a National Emphasis Program (NEP) targeted at reducing workplace hazards associated with the catastrophic release of highly hazardous chemicals**. The instruction, entitled *PSM Covered Chemical Facilities National Emphasis Program*, establishes procedures for inspecting facilities regulated under the process safety management (PSM) program (29 CFR 1910.119), which requires employers managing certain highly hazardous chemicals to develop and implement a comprehensive program to identify, manage and respond to the hazards associated with these chemicals. The instruction: (1) lists the criteria/procedures for identifying sites for programmed and unprogrammed inspections; (2) summarizes the staff experience, training and preparation necessary to conduct inspections; (3) discusses the inspection process; (4) summarizes the inspection procedures, including the opening conference, document review, overview of company's PSM program, personal protective equipment and camera/video use, initial walkaround, selection of PSM-covered process for review, inspection of contractors, compliance guidelines, review of inspection history and abatement, and issuance of citations. The inspections are divided into two categories: facilities with ammonia used for refrigeration as the only highly hazardous chemical and other PSM-regulated facilities. The instruction can be found on OSHA's website at: www.osha.gov/OshDoc/Directive_pdf/CPL_03-00-014.pdf.

Implications: The instruction is primarily of interest to facilities regulated under the PSM program.

OTHER

FEDERAL: EPA announced a pair of **initiatives to increase the public's access to information** in conjunction with a broader effort to improve agency transparency. In the first such initiative, EPA made available to the public hundreds of studies of chemicals that had previously been treated as confidential business information (CBI) under the Toxic Substances Control Act (TSCA). TSCA authorizes EPA to assess the health and safety of chemicals and maintain an inventory of chemicals currently in commerce. As part of a broader transparency initiative under TSCA, EPA has made public the identities of over 570 chemicals that were formerly classified as CBI; the agency also has made public more than 1,000 health and safety studies. The move is part of a broader effort to review new CBI claims more closely and assess existing TSCA filings to determine if past CBI claims are justified. In another transparency-related development, EPA is making public its internal "watch list," which identifies serious environmental violations that have not been the subject to timely enforcement actions. The list contains high priority violations under the federal clean air laws and significant noncompliance under the clean water and hazardous waste laws that have not been subject to an enforcement action for 180 to 360 days. The list is generated monthly using data reported by EPA regional offices and state and local agencies to four EPA data systems. Information about EPA's TSCA transparency initiatives can be found at: www.epa.gov/oppt/existingchemicals/pubs/transparency.html. Information about EPA's watch list can be found at www.epa-echo.gov/echo/echo_watch_list.html.

Implications: These initiatives reflect a broader effort by the Obama administration EPA to improve access to environmentally-significant information and facilitate public participation in the environmental regulatory process.

Other Recent Developments (Proposed)

CLIMATE CHANGE

FEDERAL: EPA and the National Highway Traffic Safety Administration (NHTSA) **proposed new standards to improve the fuel economy of light-duty motor vehicles and reduce greenhouse gas (GHG) emissions.** The standards, which will be implemented in two phases, apply to passenger cars and light trucks, including sport utility vehicles, minivans and pickup trucks, manufactured in model years 2017 through 2025. The first phase runs from 2017-2021 and requires 40.9 miles per gallon (mpg) in 2021 on an average industry fleetwide basis. The second phase runs from 2022-2025 and conditionally calls for an average fleetwide standard of 49.6 mpg in model year 2025, although a subsequent feasibility assessment and rulemaking is necessary to establish the final phase 2 fuel economy standard. The GHG emission standards, which are harmonized with the fuel economy standards, limit carbon dioxide for model year 2025 vehicles to 163 grams per mile. According to EPA and the NHTSA, the fuel savings associated with the standards will outweigh higher vehicle costs, resulting in direct benefits to consumers. The fuel economy improvements and GHG emission reductions will be achieved through technology improvements, including vehicle weight reductions, lower tire rolling resistance, improvements in vehicle dynamics, diesel engines, more efficient accessories, improvements in vehicle air conditioners, and increased use of alternative technologies such as hybrid and electric vehicles. EPA and the NHTSA are accepting comments on the proposed standards until **January 30, 2012**. They can be found in the December 1, 2011 Federal Register at: www.gpo.gov/fdsys.

Implications: The rule directly affects automobile manufacturers. According to EPA, the standards ensure that consumers will still have a full range of vehicle choices.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

December 12, 2011: Public information meeting on DEC's proposed water withdrawal permit regulations scheduled for 2:00 p.m. at DEC Headquarters in Albany. Additional meetings have been scheduled in New Paltz and West Henrietta. See the November 30, 2011 Environmental Notice Bulletin at www.dec.ny.gov/enb/20111130_not0.html for information about the meetings.

January 11, 2012: Deadline for submitting comments on DEC's revised draft high volume hydraulic fracturing SGEIS, general stormwater permit, and regulations (extended from December 12, 2011). See DEC's website at www.dec.ny.gov/energy/75370.html for details.

January 22, 2012: Deadline for submitting comments on DEC's proposed water withdrawal permit regulations. See DEC's website at www.dec.ny.gov/regulations/propregulations.html for details.

January 24, 2012: Deadline for submitting comments on EPA’s proposed revisions to the NESHAP for mineral wool production and wool fiberglass manufacturing. See the November 25, 2011 Federal Register at www.gpo.gov/fdsys for details.

January 30, 2012: Deadline for submitting comments on EPA’s stricter fuel economy and GHG emission standards for model year 2017-2025 light-duty motor vehicles. See the December 1, 2011 Federal Register at www.gpo.gov/fdsys for details.

February 16, 2012: Deadline for submitting comments on EPA’s proposed revisions to the UST regulations to incorporate requirements under the Energy Policy Act of 2005 and make other changes/updates. See the November 18, 2011 Federal Register at www.gpo.gov/fdsys for details.