



## **ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY**

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## Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<b>AIR</b>			
<p>FEDERAL  <b>Standards and Emission Guidelines for Commercial and Industrial Solid Waste Incineration Units</b>            40 CFR Part 60, subpart CCCC and DDDD            76 Fed. Reg. 80452 (Dec. 23, 2011)</p>	<p>EPA <b>proposed additional revisions to the standards and emission guidelines for new and existing commercial and industrial solid waste incineration (CISWI) units under Clean Air Act (CAA) § 129</b> following a contentious reconsideration process. Earlier this year, EPA revised the CISWI rules to address a court decision which held that EPA improperly defined solid waste, a mistake that resulted in the improper regulation of certain CISWIs under CAA § 112, rather than the more stringent CAA § 129. The CISWI standards apply to the following types of units that burn solid waste: incinerators, energy recovery units that combust solid waste, waste-burning kilns, and small, remote incinerators. Consistent with the requirements of CAA § 129, the rule establishes emission standards for particulate matter, lead, cadmium, mercury, dioxins/furans, carbon monoxide, nitrogen oxides, hydrogen chloride, and sulfur dioxide. It also contains provisions relating to siting, operator training and qualification, performance testing, monitoring/inspection, reporting and recordkeeping.</p> <p>Following the reconsideration process, EPA proposed the following changes to the standards: (1) revised emission limits for waste-burning kilns and solid fuel-burning energy recovery units based on additional information received during the reconsideration period; (2) revised monitoring requirements; and (3) revisions designed to clarify what units are considered CISWIs. EPA also is requesting comment on other issues raised during the reconsideration process.</p> <p>The proposed revisions to the CISWI regulations can be found in the December 23, 2011 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>.</p>	<p>EPA estimates that approximately 95 units will be subject to the revised CISWI rules.</p>	<p>EPA is accepting comments on the proposed revisions until <b>February 21, 2012</b>.</p> <p>EPA postponed the effective date of the March 2011 CISWI rule until judicial review of the rule is complete or EPA completes the reconsideration process.</p>

Citation	Summary	Implications	Schedule/Notes
<b>AIR</b>			
<p>FEDERAL  <b>NESHAP for Major Sources: Industrial, Commercial and Institutional Boilers and Process Heaters</b>            40 CFR Part 63, subpart DDDDD            76 Fed. Reg. 80598 (Dec. 23, 2011)</p>	<p>EPA <b>proposed revisions to the maximum achievable control technology (MACT) standards for major sources in the industrial, commercial and institutional boiler and process heater category under the CAA § 112 National Emission Standards for Hazardous Air Pollutants (NESHAP) program</b> following a contentious reconsideration process. A federal court vacated the original subpart DDDDD rule when it vacated the rule for commercial and industrial solid waste incinerators (discussed above). The revised rule, adopted in March 2011, limited emissions of mercury, dioxins, particulate matter (PM), hydrogen chloride, and carbon monoxide (CO) from numerous subcategories of boilers/process heaters; the limits differ depending on the type of fuel and type of unit. Certain smaller and/or less polluting units are subject only to work practice requirements. In particular, operators of new and existing boilers or process heaters with a heat input capacity of less than 10 million British thermal units (mmBtu) per hour must conduct a tune-up once every two years; biennial tune-ups also are required for new and existing “limited use” boilers or process heaters. Operators of new or existing units in the “Gas 1” (natural gas/refinery gas) or metal process furnace subcategories with a heat input capacity of 10 mmBtu/hour or more must conduct annual tune-ups. In addition, a one-time energy assessment must be performed on existing boilers to identify possible efficiency improvements.</p> <p>Proposed changes to subpart DDDDD following reconsideration include: (1) creating separate subcategories for units burning light and heavy liquids and making other changes/additions to the list of boiler subcategories; (2) setting separate PM emission limits for each solid fuel-fired boiler subcategory (e.g., coal, biomass) and proposing total selected metals emission limits as an alternative to PM for certain units; (3) setting new emission limits for CO; (4) replacing numeric dioxin emission limits with work practice standards; and (5) decreasing the tune-up requirements for small (5 mmBtu per hour heat input or less) clean gas and light liquid-fired boilers from once every two years to once every five years.</p> <p>The proposed revisions to the subpart DDDDD boiler MACT rules can be found in the December 23, 2011 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>.</p>	<p>EPA estimates that there are over 13,000 boilers and process heaters at major sources. To date, these sources generally have not been required to comply with MACT because of the delays caused by the court decision vacating the standard. The rule will affect all boilers and process heaters at major sources, although smaller and less polluting boilers are subject to tune-up requirements rather than emission limits.</p> <p>According to EPA, the proposed changes significantly reduce the cost of implementing the boiler MACT while maintaining the health benefits of the rule.</p>	<p>EPA is accepting comments on the proposed revisions until <b>February 21, 2012</b>.</p> <p>EPA postponed the effective date of the March 2011 major source boiler rule until judicial review of the rule is complete or EPA completes the reconsideration process.</p>

Citation	Summary	Implications	Schedule/Notes
<p><b>AIR</b></p> <p>FEDERAL  <b>Area Source NESHAP for Industrial, Commercial and Institutional Boilers</b>            40 CFR Part 63, subpart JJJJJ            76 Fed. Reg. 80532 (Dec. 23, 2011)</p>	<p>EPA <b>proposed revisions to the area (i.e., minor) source standards for industrial, commercial and institutional boilers under the CAA § 112 NESHAP program</b> following a controversial reconsideration process. The standards, set forth at 40 CFR Part 63, subpart JJJJJ, apply to coal, biomass and oil-fired boilers located at area sources; natural gas boilers, which comprise the vast majority of boilers at area sources, are exempt. The relevant requirements differ depending on whether the boiler is new or existing and on its size, with large boilers (10 mmBtu per hour heat input or more) subject to stricter requirements. In particular, new, large coal, biomass and oil-fired boilers must meet emission limits while new, small boilers are required only to perform a tune-up every two years. With respect to existing sources, only large, coal-fired boilers are subject to emission limits. All other existing boilers are subject only to a biennial tune-up requirement. In addition, owners of existing large boilers must arrange for an energy assessment to identify cost-effective energy conservation measures.</p> <p>In the wake of the reconsideration process, EPA proposed the following changes to the area source boiler standards: (1) create a new subcategory for “seasonally operated boilers” and require tune-ups for these boilers once every five years; (2) extend the deadline for owners of existing boilers to complete their initial tuneups to March 21, 2013; and (3) require owners of existing small oil-fired boilers (5 mmBtu per hour heat input or less) to complete their initial tune-ups by March 21, 2014 and extend the schedule for subsequent tune-ups to once every five years.</p> <p>The proposed revisions can be found in the December 23, 2011 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>.</p>	<p>EPA estimates that the area source rule covers approximately 187,000 existing boilers at 92,000 facilities. Only 2% of the boilers regulated under the area source standards are subject to emission limits; the remainder must comply with work practice requirements only.</p>	<p>EPA is accepting comments on the proposed revisions until <b>February 21, 2012</b>.</p> <p>EPA did not stay implementation of the area source standard pending completion of the reconsideration process. As a result, owners and operators of existing boilers subject to the rule were required to submit initial notifications to EPA by September 17, 2011.</p>

Citation	Summary	Implications	Schedule/Notes
<p><b>AIR</b></p> <p><b>NEW YORK STATE Requirements for Heavy-Duty Vehicles Owned/Operated on Behalf of State Agencies</b>            6 NYCRR Part 248</p>	<p><b>DEC proposed major revisions to the rules implementing the Diesel Emissions Reduction Act (DERA) of 2006 to address court decisions rejecting key elements of the rule as well as recent legislative changes.</b> DERA requires heavy-duty vehicles that are owned by, operated by or on behalf of, or leased by any state agency to implement measures designed to reduce sulfur dioxide, nitrogen oxide and other emissions. The implementing regulations, which are set forth at 6 NYCRR Part 248, require state agencies, state and regional public authorities, and contractors working on behalf of these entities to use only heavy-duty vehicles (HDVs) that are: (1) fueled with ultra-low sulfur diesel fuel; and (2) equipped with best available retrofit technology (BART) that achieves specified reductions in particulate matter and, potentially, nitrogen oxide (NOx) emissions (unless the HDV has received a BART waiver). Also, certain HDVs must be equipped with low NOx rebuild kits, which are designed to correct flaws in the engine’s software that lead to excess NOx emissions.</p> <p>Under Part 248, “contractor” was originally defined to include both prime and subcontractors. A pair of courts rejected this provision, concluding that the phrase “on behalf of” contained in the statute referred only to prime contractors. Also, the legislature revised the statute to extend the compliance schedule and add a new waiver provision. With this rulemaking, DEC proposed to: (1) revise the definitions of contractor and prime contractor to clarify that the rule does not cover subcontractors; (2) exclude most companies delivering materials to the work site from regulation; (3) replace the three-part compliance schedule with a single compliance deadline of December 31, 2012 for using and maintaining BART; and (4) add a new “useful life” waiver provision that allows DEC to exclude from regulation equipment that will be permanently taken out of service by December 31, 2013.</p> <p>The proposed regulation can be found on DEC’s website at: <a href="http://www.dec.ny.gov/regulations/propregulations.html">www.dec.ny.gov/regulations/propregulations.html</a>.</p>	<p>Under the proposed revisions to Part 248 any HDVs owned/operated by a state agency or prime contractor that are used to provide “regulated entity work” to the state must satisfy Part 248. For purposes of the regulation, a HDV is any on or off-road vehicle powered by diesel fuel with a gross vehicle weight of more than 8,500 pounds; in the case of off-road vehicles, the term also includes vehicles with an engine of 50 horsepower or greater. The term does not include heavy-duty construction vehicles, emergency vehicles, most agricultural equipment, and certain other vehicles.</p>	<p>DEC is accepting comments on the proposed revisions to Part 248 until <b>January 26, 2012</b>. A public hearing has been scheduled at DEC Headquarters in Albany on <b>January 18, 2012</b>, with additional hearings scheduled in New York City and Avon.</p>

Citation	Summary	Implications	Schedule/Notes
<b>AIR/SOLID WASTE</b>			
FEDERAL <b>Identification of Non-Hazardous Secondary Materials as Solid Waste</b> 40 CFR Part 241 76 Fed. Reg. 80452 (Dec. 23, 2011)	<p><b>EPA proposed changes to its definition of non-hazardous solid waste to be used to identify whether non-hazardous secondary materials burned as fuels or used as ingredients in combustion units are solid waste.</b> The rule was adopted in March 2011 in the wake of the court decision vacating the commercial and industrial solid waste incineration rule on the ground that EPA improperly defined CISWI to exclude units that burn solid waste and recover energy. It clarifies what materials are considered “solid waste” when burned and thus what units are regulated under CAA § 129 rather than CAA § 112.</p> <p>The March 2011 rule excluded the following non-hazardous secondary materials from the definition of solid waste when used legitimately as a fuel or an ingredient in a combustion unit:</p> <ul style="list-style-type: none"> <li>• Non-hazardous secondary materials that remain within the control of the generator and are used as fuel;</li> <li>• Scrap tires managed by established tire collection programs and used as fuel;</li> <li>• Resinated wood used as fuel;</li> <li>• Non-hazardous secondary materials that are used as ingredients;</li> <li>• Discards that have undergone processing to produce fuel or ingredient products; and</li> <li>• Non-hazardous secondary materials that are used as fuels for which an individual non-waste determination has been granted.</li> </ul> <p>Upon reconsideration, EPA proposed the following changes to the rules for identifying non-hazardous secondary materials that are not solid waste when burned: (1) expand the definition of clean cellulosic biomass (which is considered a traditional fuel when burned and so is not considered a solid waste); (2) add a process for an owner or operator to petition EPA to categorically list a particular type of non-hazardous secondary material as a non-waste; and (3) expand the list of materials that are not considered solid waste when burned to include additional categories of scrap tires.</p> <p>The proposed revisions can be found in the December 23, 2011 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>.</p>	<p>The rule provides a basis for determining whether facilities that burn secondary materials as fuels or ingredients are regulated as boilers under CAA § 112 or CISWIs under CAA § 129.</p>	<p>EPA is accepting comments on the proposed revisions until <b>February 21, 2012</b>.</p>

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<b>WATER</b>			
FEDERAL <b>Effluent Guidelines and Performance Standards for Pollutant Discharges from Construction Sites</b> 40 CFR Part 450 77 Fed. Reg. 112 (Jan. 3, 2012)	<p><b>EPA solicited data and information to aid in developing numeric effluent limitations for construction-related turbidity.</b> In December 2009, EPA established minimum erosion and sediment control, soil stabilization, and pollution prevention measures designed to reduce turbidity and sediment discharges from construction sites. In addition, sites disturbing 10 acres or more were required to comply with a controversial turbidity limit of 280 nephelometric turbidity units (NTU) and monitor compliance with that limit. Following a lawsuit, EPA stayed the NTU limit to provide the agency with time to reconsider the technical basis for the standard and adopt a replacement rule. The recent notice seeks data and information to help it assess the merits of a numeric standard. Issues and areas where EPA is soliciting feedback, data and information include: (1) effectiveness, costs and feasibility of different technologies; (2) sampling and data collection procedures and protocols to ensure the representativeness of data; (3) effect of storm size, intensity and duration of precipitation on performance of passive treatment; (4) possible exemptions; and (5) use of treatment chemicals, disposal and toxicity concerns.</p> <p>The notice can be found in the January 3, 2012 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>.</p>	<p>The notice is primarily of interest to developers and others engaged in large-scale construction projects.</p>	<p>EPA is accepting data and information in response to the notice until <b>March 5, 2012</b>.</p>

## Other Recent Developments (Final)

### AIR

FEDERAL: EPA **published a direct final rule implementing changes to its area (i.e., minor) source standards for prepared feeds manufacturing** adopted in 2010 under the NESHAP program. The standards, which are set forth at 40 CFR Part 63, subpart DDDDDDD, apply to new and existing prepared feed manufacturers (except for dog and cat food) who add chromium or manganese compounds to their products. The standards require all facilities to implement certain general management practices to minimize excess dust; additional requirements apply to raw material storage areas, mixing operations, and bulk loading operations and to facilities that produce more than 50 tons of feed per day. With the recent rulemaking, EPA replaced a provision requiring existing facilities that produce more than 50 tons of feed per day to be equipped with cyclones that achieve a 95-percent design efficiency with a requirement that the cyclones be operated consistent with good engineering practices. EPA made the change after concluding that the stricter rule would require many facilities to replace their existing cyclones, which would not be cost effective. EPA also adopted changes to the monitoring, notification, reporting and recordkeeping requirements. The revisions will take effect February 21, 2012 unless EPA receives adverse comments; the direct final rule can be found in the December 23, 2011 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: EPA originally estimated that approximately 1,800 area source prepared feed manufacturers add chromium or manganese compounds to their products and so are subject to the NESHAP.

NEW YORK STATE: DEC published a **declaratory ruling relating to the definition of “common control” under New York’s air permitting regulations**. The petitioner in *Seneca Meadows, Inc.* owns and operates a landfill that includes a landfill gas collection system. A significant portion of the landfill gas is sold to a landfill gas-to-energy plant located across the street from the landfill and owned by a different entity. Both the landfill and energy plant have separate Title V permits. In the wake of plans to modify the energy plant, the owner of the landfill petitioned DEC to issue a declaratory ruling on whether the two facilities are under “common control” for purposes of the Title V program. After reviewing relevant statutory/regulatory provisions as well as numerous EPA letters and guidance documents, DEC’s Deputy Counsel concluded that whether two or more facilities are “under common control” will continue to be determined on a case-by-case basis. Per the ruling, DEC staff must first determine whether there is common ownership between the facilities. If yes, common control is established. If no, staff must review the facts and circumstances specific to the permit application and apply the review criteria developed over the years. DEC declined to determine whether the landfill and energy plant were under common control, instead requiring Department staff to make the decision after reviewing the pending permit application. The ruling can be found on DEC’s website at: [www.dec.ny.gov/regulations/77083.html](http://www.dec.ny.gov/regulations/77083.html).

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



## SOLID AND HAZARDOUS WASTE

NEW YORK STATE: New York's **ban on disposing of rechargeable batteries as solid waste took effect December 5, 2011**. New York's Rechargeable Battery Recycling Act, which was enacted in 2010, requires manufacturers to establish take-back programs for rechargeable batteries, such as those found in cellular and cordless phones, digital cameras and laptop computers. In particular, the law: (1) required battery manufacturers to arrange for the return of batteries and submit a plan to DEC by March 10, 2011 explaining how they will collect, transport and recycle rechargeable batteries collected by retailers; (2) required retailers that sell covered rechargeable batteries to begin accepting used batteries from consumers effective June 8, 2011; and (3) bans any person, defined broadly, from knowingly disposing of covered rechargeable batteries as solid waste effective December 5, 2011. Retailers who sell rechargeable batteries or products that contain rechargeable batteries must accept up to 10 batteries per day and post signs addressing the disposal prohibition and identifying the store as a battery collection site. In a related development, **businesses were banned from disposing of electronic waste in landfills as of January 1, 2012**. Private and public haulers and owners/operators of landfills must provide customers with written information about available options for recycling unwanted electronic equipment such as televisions, computer equipment, and small electronic equipment such as VCRs and DVD players; landfills must post signs addressing the new law. The disposal ban applies to individuals beginning January 1, 2015. Information about the electronic waste and rechargeable battery recycling laws can be found on DEC's website at: [www.dec.ny.gov/chemical/294.html](http://www.dec.ny.gov/chemical/294.html).

Implications: As of December 5, 2011 all rechargeable batteries covered by the 2010 law must be recycled; as of January 1, 2012, all electronic equipment disposed of by businesses must be recycled.

### Other Recent Developments (Proposed)

## AIR

FEDERAL: On December 30, 2011, a **federal appeals court stayed implementation of EPA's controversial Cross-State Air Pollution Rule (CSAPR)** pending resolution of petitions by various states and industry groups challenging the rule. The CSAPR is an emission cap-and-trade program designed to address ozone and fine particulate matter nonattainment problems in the Northeast by reducing emissions of nitrogen oxides and sulfur dioxide from power plants. The rule, which was scheduled to begin January 1, 2012, establishes state-specific emission budgets based on EPA's quantification of each state's contribution to nonattainment and/or interference with maintenance of the NAAQS downwind. EPA's existing Clean Air Interstate Rule (CAIR) will remain in effect pending resolution of the CSAPR challenge. The same day the court issued the stay EPA **proposed to revise its regional haze rule to allow states subject to the CSAPR to substitute that rule for the requirement to install best available retrofit technology (BART)** on individual sources under the regional haze rule. The order granting the stay can be found at: [www.epa.gov/crossstaterule/pdfs/CourtDecision.pdf](http://www.epa.gov/crossstaterule/pdfs/CourtDecision.pdf). EPA is accepting comments on the regional haze proposal until **February 13, 2012**; it can be found in the December 30, 2011 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The two announcements affect power plants covered by the CSAPR; in addition, adoption of the CSAPR substitution rule would allow major sources in CSAPR states constructed between 1962 and 1977 to avoid the requirement to install BART.

FEDERAL: EPA proposed changes to the **National Emission Standards for Hazardous Air Pollutants for primary aluminum reduction plants (40 CFR Part 63, subpart LL) 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 the residual risk review process, EPA concluded that the existing maximum achievable control technology standards for primary aluminum reduction plants, when combined with lower proposed limits on polycyclic organic matter emissions from certain types of potlines, provide an ample margin of safety to protect public health. Following the periodic technology review, EPA proposed to require implementation of specific anode bake furnace startup practices. EPA also proposed to add technology-based emission limits for pollutants not covered by the current standards. Finally, consistent with other recent NESHAP rulemakings, EPA proposed to require facilities to comply with MACT standards at all times, including during startup and shutdown. With respect to malfunctions, EPA proposed an affirmative defense to civil penalties, which is available to facilities that can show that the event causing the exceedence, in fact, met the definition of malfunction and that the facility took all necessary steps to mitigate and correct it. EPA is accepting comments on the proposed rule until **January 20, 2012**; it can be found in the December 6, 2011 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The revisions to subpart LL are primarily of interest to sources associated with the production of aluminum by electrolytic reduction. EPA estimates that there are 15 facilities in the nation subject to the primary aluminum standard.

FEDERAL: EPA completed its residual risk review of the **National Emission Standards for Hazardous Air Pollutants for the pulp and paper industry (40 CFR Part 63, subpart S)** and concluded that the current standard protects public health with an adequate margin of safety and that no changes are necessary to address residual risks remaining after imposition of MACT. Following a periodic technology review, EPA proposed stricter kraft condensate standards that reflect the increased performance of existing controls observed during the review process. Other proposed changes include: (1) revising the existing startup, shutdown and malfunction provisions consistent with the changes for primary aluminum production outlined above; and (2) requiring air emissions performance testing every five years for facilities complying with the standards for kraft, soda and semi-chemical pulping vent gases, sulfite processes, and bleaching systems. EPA is accepting comments on the proposed rule until **February 27, 2012**; it can be found in the December 27, 2011 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The revisions to subpart S are primarily of interest to pulp and paper mills. EPA estimates that there are 171 facilities in the nation subject to the standard.

FEDERAL/NEW YORK STATE: EPA is accepting comments on its **proposed response to state ozone nonattainment area designations recommended under the 2008 rule reducing the 8-hour ozone national ambient air quality standard (NAAQS)** from 0.80 parts per million (ppm) to 0.75 ppm. Consistent with New York's recommendations, EPA has identified two nonattainment areas in New York under the 0.75 ppm ozone standard – the New York City metropolitan area (comprising New York City, Long Island and Westchester and Rockland Counties) and Jamestown (Chautauqua County). A proposed consent decree commits EPA to finalizing the area designations by May 31, 2012. EPA is accepting comments on its proposed response to state area designation recommendations until **January 19, 2012**; the notice can be found in the December 20, 2011 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The designations, if approved, may prompt DEC to adopt additional measures to reduce emissions of volatile organic compounds and/or nitrogen oxides, both of which contribute to ozone formation.

FEDERAL/NEW YORK STATE: EPA proposed to **approve revisions to New York's state implementation plan (SIP) for ozone to incorporate changes to state regulations targeted at reducing emissions of volatile organic compounds (VOCs)**, a major contributor to ozone formation. In 2010, DEC amended the following rules regulating VOC sources: 6 NYCRR Part 228 (amending surface coating regulations to add standards for commercial and industrial adhesives and sealants and make other changes); 6 NYCRR Part 234 (amending graphic arts regulations to expand applicability to letterpress printing, establish reasonably available control technology requirements for facilities engaged in flexographic, offset lithographic and rotogravure printing, and make other changes); and 6 NYCRR Part 241 (establishing a new regulation addressing asphalt pavement and asphalt-based surface coating). In each case, EPA concluded that the revisions are consistent with the Clean Air Act and EPA policy and should be approved. EPA is accepting comments on the proposed approval until **January 11, 2012**; the notice can be found in the December 12, 2011 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: If EPA finalizes its SIP approval, the revised regulations will be enforceable by both EPA and DEC.

NEW YORK STATE: DEC proposed to revise its existing incinerator regulations to **implement EPA's new emission standards for new and existing sewage sludge incinerators** under CAA § 129, 42 USC § 7429. The federal rules, which are set forth at 40 CFR Part 60, subpart LLLL (new sources) and MMMM (existing sources), establish emission standards for multiple hearth and fluidized bed incinerators. As with other solid waste incinerator standards, the regulations limit emissions cadmium, carbon monoxide, dioxins/furans, hydrogen chloride, lead, mercury, nitrogen oxides, particulate matter, and sulfur dioxide. Owners/operators of new and existing units must conduct initial and annual performance tests and some continuous monitoring; they also must meet operator training and qualification requirements, conduct a siting analysis (new units only), and comply with extensive recordkeeping and reporting requirements. With the current rulemaking, DEC proposed to revise its existing incinerator regulations, which are set forth at 6 NYCRR Part 219, to incorporate the federal standards by reference and establish a schedule for facilities to comply with the standards and submit a Title V permit application (if the facility does not already have a Title V permit). DEC is accepting comments on the proposed rule until **January 26, 2012**. A public hearing has been scheduled at DEC Headquarters in Albany on **January 18,**

**2012**, with additional hearings scheduled in New York City and Avon. The proposed rule can be found on DEC's website at: [www.dec.ny.gov/regulations/propregulations.html](http://www.dec.ny.gov/regulations/propregulations.html).

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

## WATER

FEDERAL: EPA made available for comment a **revised draft general permit under the National Pollutant Discharge Elimination System (NPDES) permit program authorizing discharges incidental to the normal operation of non-military and non-recreational vessels 79 or more feet in length**. If finalized, this permit will replace the existing NPDES Vessel General Permit (VGP), which is scheduled to expire December 19, 2013. EPA also is proposing a separate general permit targeted at smaller non-military and non-recreational vessels (sVGP). EPA issued the VGP in 2008 after a federal district court vacated a long-standing rule exempting discharges incidental to normal vessel operations from NPDES permitting; in response, Congress adopted a moratorium prohibiting NPDES permitting of incidental discharges from commercial fishing vessels and small vessels until December 2013. The current VGP establishes effluent limits, best management practices, and inspection, monitoring, reporting and recordkeeping requirements to control discharges. Larger vessels covered by the current VGP must submit a Notice of Intent (NOI) to obtain coverage under the permit. Smaller vessels are automatically covered by the VGP; no NOI is required. The revised draft VGP expands the list of discharge categories covered by the permit. In addition, the new permit for the first time contains numeric ballast water discharge limits for most vessels; it also contains more stringent limits for certain other discharges. Smaller vessels subject to the new sVGP will automatically be covered December 19, 2013 when the congressional moratorium expires. Vessel owners/operators must complete a sVGP permit authorization and record of inspection form and conduct and certify annual inspections. EPA is accepting comments on the draft NPDES general permits until **February 21, 2012**. Information about the permits can be found at: [cfpub.epa.gov/npdes/vessels/vgpermit.cfm](http://cfpub.epa.gov/npdes/vessels/vgpermit.cfm).

Implications: The permits will be required for both large and small commercial vessels.

## OTHER

FEDERAL: The federal Council on Environmental Quality (CEQ) made available for comment **draft guidance identifying techniques for improving the timeliness and efficiency of the National Environmental Policy Act (NEPA) review process**. NEPA requires federal agencies to incorporate environmental considerations into their planning and decisionmaking. Specifically it requires federal agencies to prepare detailed statements assessing the environmental impact of, and alternatives to, major federal actions that significantly affect the environment. The draft guidance, entitled *Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act*, identifies measures to facilitate the review process, including: (1) encouraging development of concise NEPA documents that concentrate on significant issues; (2) integrating NEPA into the planning process early; (3) conducting early and well-defined scoping to identify issues requiring thorough review; (4)

improving coordination with state, local and tribal review processes; (5) expediting responses to comments; and (6) establishing clear time lines for NEPA review. The CEQ is accepting comments on the draft guidance until **January 27, 2012**; it can be found in the December 13, 2011 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The draft guidance is primarily of interest to individuals involved in large-scale projects requiring federal permits and approvals.

NEW YORK STATE: DEC published its **regulatory agenda for 2012**. The agenda identifies the regulatory changes DEC may pursue in the upcoming year. Key items on the agenda include:

- **6 NYCRR Part 201, Permits and Registrations**: Delete outdated requirements, clarify permitting and application requirements (including those dealing with exemptions and capping), add and/or amend definitions, enhance permit requirements for minor sources, and ensure consistency between Part 201 and 6 NYCRR Part 231 (New Source Review).
- **6 NYCRR Part 205, Architectural and Industrial Maintenance Coatings**: Include additional and more restrictive VOC limits and update rules to clarify certain implementation issues.
- **6 NYCRR Part 212, General Process Emission Sources**: Establish a new procedure for evaluating and reducing air toxic impacts from stationary sources.
- **6 NYCRR Part 222, Distributed Generation**: Adopt new regulations establishing standards for distributed generation sources – stationary internal combustion engines used to produce electricity for use at the facility at which they are located, including emergency generators.
- **6 NYCRR Part 225, Fuel Composition and Use**: Revise Subpart 225-1, Sulfur Limitations, to lower the sulfur content of distillate and residual oils used in stationary sources and portable engines (other than nonroad engines) and delete out-of-date requirements. In addition, DEC plans to revise Subpart 225-3, Gasoline, to lower the maximum allowable summertime gasoline volatility and perhaps include upstate counties in the federal reformulated gasoline program.
- **6 NYCRR Part 228, Surface Coating Processes**: Revise the VOC emission standards to implement new VOC Control Techniques Guidelines issued by EPA between 2006 and 2008.
- **6 NYCRR Part 230, Gasoline Dispensing Sites and Transport Vehicles**: Update and clarify testing requirements for gas stations, conform various provisions to new federal requirements and guidance, and delete Stage II VOC control equipment requirements currently applicable downstate.
- **6 NYCRR Part 232, Dry Cleaning**: Streamline and update regulations to make them consistent with federal standards.
- **6 NYCRR Part 235, Consumer Products**: Implement additional VOC product content limits.
- **6 NYCRR Part 360, Solid Waste Management Facilities**: Major revisions to the Part 360 regulations, including reorganizing the rule to better organize solid waste topics and addressing subjects not currently covered by the regulations, such as automobile dismantlers, pharmaceutical waste, electronic waste, dredge materials, biohazard incident waste, and yellow grease.

- **6 NYCRR Part 368, Product Stewardship and Labeling:** Rename regulation; revise existing recycling emblem regulations to be consistent with national labeling guidelines; and develop regulations implementing recent laws addressing mercury-added consumer products and product stewardship requirements for electronic waste, cell phones and recyclable batteries.
- **6 NYCRR Part 375:** Provide additional direction on issues encountered since the rule was adopted; incorporate soil cleanup objective changes; consider possible changes to the definition of “significant threat” under the Superfund program; consider opportunities to incorporate sustainable remediation and development techniques into cleanup projects; and make other changes and corrections.
- **6 NYCRR Part 570, Permitting of Liquefied Natural Gas (LNG) Facilities:** Develop new regulations covering the safe siting, construction, operation and inspection of LNG facilities.
- **6 NYCRR Parts 595-599, Chemical Bulk Storage; Part 610, Major Oil Storage Facilities; Parts 612-614, Petroleum Bulk Storage:** Revise regulations to: incorporate changes implementing the federal Energy Policy Act of 2005, which requires states to adopt training and other requirements relating to underground storage tanks; revise the list of hazardous substances in Part 597 to reflect federal changes and updates; conform key definitions to reflect recent changes to the petroleum bulk storage implementing statute; enhance monitoring, maintenance and equipment requirements to prevent leaks and spills; and make other changes.
- **6 NYCRR Part 617, State Environmental Quality Review Act:** Update the lists of Type I and II actions, expand regulation to address new topics/issues being reviewed as part of the ongoing update of the Environmental Assessment Forms, and make other procedural and substantive changes.

DEC’s full 2012 agenda can be found at: [www.dec.ny.gov/regulations/36816.html](http://www.dec.ny.gov/regulations/36816.html).

## Recent Decisions

NEW YORK STATE: New York’s highest court recently issued a **decision upholding key provisions of the State’s remedial program regulations against a challenge that DEC had exceeded its statutory authority by requiring the restoration of inactive hazardous waste disposal sites to “pre-disposal conditions, to the extent feasible.”** Under § 27-1313(5)(d) of the New York Environmental Conservation Law, the goal of the inactive hazardous waste disposal site remedial program is the “complete cleanup of the site through the elimination of the significant threat to the environment posed by the disposal of hazardous wastes at the site.” By comparison, the implementing regulations identify the goal of the remedial program as the restoration of a site “to pre-disposal conditions, to the extent feasible.” 6 NYCRR § 375-2.8(a). In *In re New York State Superfund Coalition v. DEC*, the New York Court of Appeals rejected the industry coalition’s argument that a plain reading of the statute indicates that a “complete cleanup” is achieved only through “the elimination of the significant threat to the environment.” According to the court, while the cleanup of an inactive hazardous waste site is triggered by a finding of a “significant threat,” that standard does not limit the scope of the subsequent remedial program. The court went on to note that the provision of the rule requiring cleanup to pre-disposal conditions *to the extent feasible* prevented DEC from unilaterally fashioning a remedy without considering practical considerations such as technological

feasibility, cost-effectiveness and procedural due process. Two justices dissented, arguing that the language of the statute requiring “complete cleanup” through “the elimination of the significant threat” was unambiguous. The court’s decision can be found at: [www.courts.state.ny.us/CTAPPS/Decisions/2011/Dec11/189opn11.pdf](http://www.courts.state.ny.us/CTAPPS/Decisions/2011/Dec11/189opn11.pdf).

Implications: The decision is of potential interest to anyone involved in site remediation activities.

## Upcoming Deadlines

**NOTE:** This calendar contains items of general interest.

**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](http://www.dec.ny.gov/energy/75370.html) for details.

**January 11, 2012:** Deadline for submitting comments on EPA’s proposed approval of revisions to New York’s SIP to incorporate revisions to various VOC reduction rules. See the December 12, 2011 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**January 19, 2012:** Deadline for submitting comments on EPA’s proposed response to state recommendations regarding designation of nonattainment areas under the 2008 ozone NAAQS. See the December 20, 2011 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**January 20, 2012:** Deadline for submitting comments on EPA’s proposed revisions to the NESHAP for primary aluminum reduction plants. See the December 6, 2011 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) 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](http://www.dec.ny.gov/regulations/propregulations.html) for details.

**January 24, 2012:** Deadline for submitting comments on EPA’s proposed revisions to the mineral wool production NESHAP. See the November 25, 2011 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**January 26, 2012:** Deadline for submitting comments on DEC’s (1) proposed revisions to its BART rules for state agency HDVs; and (2) proposed revisions to its incinerator regulations to incorporate new federal rules for sewage sludge incinerators. See DEC’s website at [www.dec.ny.gov/regulations/propregulations.html](http://www.dec.ny.gov/regulations/propregulations.html) for details.

**January 27, 2012:** Deadline for submitting comments on the CEQ's draft guidance entitled *Improving the Process for Preparing Efficient and Timely Environmental Reviews under the National Environmental Policy Act*. See the December 13, 2011 Federal Register at [www.gpo.gov/fdsys](http://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](http://www.gpo.gov/fdsys) for details.

**January 31, 2012:** Deadline for submitting comments on EPA's proposed revisions to the ferroalloys production NESHAP (extended from January 9, 2012). See the November 23, 2011 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**February 3, 2012:** Deadline for submitting comments on EPA's proposed revisions to the wool fiberglass manufacturing NESHAP (extended from January 24, 2012). See the November 25, 2011 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**February 13, 2012:** Deadline for submitting comments on EPA's proposal to allow states to substitute the CSAPR for source-specific BART requirements under the regional haze rule. See the December 30, 2011 Federal Register at [www.gpo.gov/fdsys](http://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](http://www.gpo.gov/fdsys) for details.

**February 21, 2012:** Deadline for submitting comments on EPA's proposed revisions to the major and area source boiler standards, CISWI standards, and non-hazardous secondary materials rule. See the December 23, 2011 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**February 21, 2012:** Deadline for submitting comments on EPA's draft vessel NPDES general permits. See EPA's website at [cfpub.epa.gov/npdes/vessels/vgpermit.cfm](http://cfpub.epa.gov/npdes/vessels/vgpermit.cfm) for details.

**February 27, 2012:** Deadline for submitting comments on EPA's proposed revisions to the pulp and paper production NESHAP. See the December 27, 2011 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**March 5, 2012:** Deadline for submitting information and data concerning EPA's numeric turbidity limit for discharges of stormwater from certain construction sites. See the January 3, 2012 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.