



ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<p>AIR</p> <p>FEDERAL Uniform Standards for Heat Exchange Systems 40 CFR Part 63, subpart CC; Part 65, subparts H and L 77 Fed. Reg. 960 (Jan. 6, 2012)</p>	<p>EPA proposed to create national uniform standards for heat exchange systems in conjunction with changes to the heat exchange requirements of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for petroleum refineries. The proposed uniform standards contain two key components set forth at 40 CFR Part 65: subpart H, which contains basic rules governing compliance with uniform standards; and subpart L, which contains basic work practice, notification, reporting and recordkeeping requirements for heat exchangers. Under the proposal, heat exchange systems regulated under the petroleum refinery NESHAP, 40 CFR Part 63, subpart CC, would be required to comply both with facility-specific requirements contained in subpart CC and uniform requirements found in 40 CFR Part 65, subpart L to the extent they are referenced in subpart CC. Going forward, EPA may reference the uniform standard in Part 65 whenever it revises other NESHAPs and/or New Source Performance Standards that include requirements for heat exchange systems. The rationale for concluding that the uniform standards are consistent with particular statutory requirements will be included in the rulemaking, as will any requirements tailored to the specific needs of the source category. EPA hopes that the uniform standards will simplify the rulemaking and compliance process and assure technical consistency.</p> <p>The proposed rule can be found in the January 6, 2012 Federal Register at: www.gpo.gov/fdsys.</p>	<p>Many facilities are subject to overlapping federal and state standards regulating similar activities. EPA’s proposal to create uniform standards represents an attempt to simplify the rule development and implementation process by adopting a uniform standard covering similar processes at different types of facilities and under multiple programs. EPA has undertaken similar initiatives in the past with mixed results. The success of the effort will likely depend on how much EPA decides to deviate from the uniform standards it develops – the more deviations it implements, the less EPA and the regulated community will benefit from the “simplicity” promised by uniform rules.</p>	<p>EPA is accepting comments on the proposed rule until March 6, 2012.</p>

Citation	Summary	Implications	Schedule/Notes
AIR			
<p>FEDERAL National Emission Standards for Hazardous Air Pollutants for Chemical Manufacturing Area Sources 40 CFR Part 63, subpart VVVVVV 77 Fed. Reg. 4522 (Jan. 30, 2012)</p>	<p>EPA proposed revisions to the area (i.e., minor) source standards for chemical manufacturing sources under the National Emission Standards for Hazardous Air Pollutants program in response to a notice of reconsideration brought by a pair of industry trade associations. The standards, which are set forth at 40 CFR Part 63, subpart VVVVVV, regulate chemical manufacturing process units (CMPUs) that use, generate as byproducts, or produce one or more of 15 specifically-listed organic or metal hazardous air pollutants (HAPs). Categories of equipment and activities covered by the standard include process vents, storage tanks, transfer operations, wastewater systems, heat exchange systems, and equipment leaks. The current notice seeks comment on the following issues raised on reconsideration:</p> <ul style="list-style-type: none"> • Whether EPA should continue to require Title V permits for all facilities that became synthetic area sources by installing air pollution controls after 1990 or revise the rule to require permits for synthetic area sources only if controls were installed on CMPUs subject to the rule. • Whether EPA should retain an existing provision that allows facilities to comply only with the most stringent provisions when two overlapping rules apply. • The proper standard for leak inspections. • The proper standard for requiring covers or lids on process vessels. • The requirement to conduct leak inspections when equipment is in HAP service. • The applicability of the “family of materials” concept for purposes of determining what units are covered by the NESHAP. <p>EPA also proposed to revise the rule to specify applicable requirements during startup, shutdown and malfunction events and establish an affirmative defense to civil penalties for excess emissions during malfunctions. Finally, EPA proposed amendments and technical corrections to clarify applicability and compliance issues.</p> <p>The proposed rule can be found in the January 30, 2012 Federal Register at: www.gpo.gov/fdsys.</p>	<p>Activities potentially subject to the NESHAP include:</p> <ul style="list-style-type: none"> • Agricultural chemicals and pesticides manufacturing; • Cyclic crude and intermediate production; • Industrial inorganic chemical manufacturing; • Industrial organic chemical manufacturing; • Inorganic pigments manufacturing; • Miscellaneous organic chemical manufacturing; • Plastic materials and resins manufacturing; • Pharmaceutical production; and • Synthetic rubber manufacturing. <p>With this rulemaking, EPA is seeking comments on issues raised during reconsideration as well as other changes intended to update and/or clarify the rule.</p>	<p>EPA is accepting comments on the proposed revisions until March 30, 2012.</p>

Citation	Summary	Implications	Schedule/Notes
CLIMATE CHANGE			
<p>NEW YORK STATE Carbon Dioxide Emissions from Major Electric Generating Facilities 6 NYCRR Part 251</p>	<p>As required by the 2011 Power NY Act, DEC proposed regulations establishing carbon dioxide (CO₂) emission limits for new and substantially expanded major electric generating facilities – defined as facilities with a generating capacity of at least 25 megawatts (MW). Facilities subject to the rule must comply with CO₂ emission limits measured as a 12-month rolling average on either an output (annual total MW generated) or input (annual Btu input) basis. The regulation contains output and input-based CO₂ emission limits for two broad categories of units that apply depending on the specific type of unit. Owners/operators of units that are not subject to these limits must propose and meet a case-specific emission limit for CO₂ based on an analysis of control technologies and operating efficiencies for existing sources and other relevant information. To demonstrate compliance, the facility must satisfy applicable monitoring, reporting and recordkeeping requirements contained in 40 CFR Part 75, which sets forth the monitoring requirements for sources regulated under the Title IV acid rain program. The proposed rule also contains specific provisions relating to installing and operating continuous emission monitoring systems, out-of-control periods, maintenance of vendor-certified fuel receipts, and preparation of various reports, among other subjects.</p> <p>The proposed regulation can be found on DEC’s website at: www.dec.ny.gov/regulations/propregulations.html.</p>	<p>The regulation applies to new electric generating facilities with a nameplate capacity of at least 25 MW and existing facilities constructing at least 25 MW of additional capacity. Under the authorizing statute, facilities seeking a certificate from the new siting board must demonstrate compliance with Part 251 and obtain a permit from DEC that incorporates the requirements of the rule.</p> <p>Per DEC, most conventional units can meet the CO₂ emission limits in the regulations. However, new coal-fired and oil-fired boilers will require controls such as carbon capture and sequestration (CCS) to comply with Part 251. Since CCS technologies are not widely available, the rule has the effect of discouraging construction of coal and oil-fired power plants in New York.</p>	<p>DEC is accepting comments on the proposed regulation until March 15, 2012. A public hearing is scheduled for March 5, 2012 at DEC Headquarters in Albany, with addition hearings scheduled in New York City and Buffalo.</p> <p>Under the statute, DEC must issue the final rule by August 4, 2012.</p>

Citation	Summary	Implications	Schedule/Notes
OTHER			
<p>NEW YORK STATE Analysis of Environmental Justice Issues Associated with Siting Major Electric Generating Facilities 6 NYCRR Part 487</p>	<p>As required by the 2011 Power NY Act, DEC proposed regulations for conducting environmental justice (EJ) reviews required for siting major energy projects (i.e., projects having a generating capacity of 25 MW or more). Under newly proposed 6 NYCRR Part 487, the following steps must be undertaken to assess whether proposed major electric generating facilities will have a disproportionate impact on minority or low income communities:</p> <ul style="list-style-type: none"> • Identify the impact study area (a minimum of a one-half mile radius around the proposed location of the facility or larger based on site-specific factors). • Determine whether the impact study area contains one or more EJ areas applying criteria spelled out in the regulation. • Comply with the general requirements and procedures for completing the EJ analysis. Where an EJ area is present, the applicant must conduct a cumulative impact analysis of air quality in accordance with a modeling protocol approved by DEC. The results of that analysis must then be compared to “comparison areas” to evaluate whether any significant and adverse disproportionate impacts in the impact study area may result from the construction and/or operation of the proposed facility. The rule includes direction on how to prepare the comprehensive demographic, economic and physical descriptions of the impact study and comparison areas. • If impacts are found, identify the measures to be taken to avoid, offset or minimize each impact. The applicant must avoid any disproportionate impacts to the maximum extent practicable. If the impact cannot be avoided it must be minimized. Any impacts that cannot be minimized must be offset. • Prepare a statement of environmental justice issues summarizing the final EJ analysis. <p>The proposed regulation can be found on DEC’s website at: www.dec.ny.gov/regulations/propregulations.html.</p>	<p>Over the years, DEC has issued various guidance documents addressing EJ issues generally. In particular, DEC has issued Commissioner Policy 29, <i>Environmental Justice and Permitting</i>, which provides guidance on incorporating EJ concerns into New York’s environmental permit review process and DEC’s application of the State Environmental Quality Review Act. DEC’s proposed Part 487 regulations represent one of the first times EJ concerns have been directly addressed by a major state statute/regulation.</p>	<p>See above.</p>

Other Recent Developments (Final)

CLIMATE CHANGE

FEDERAL: EPA released the first round of **data received under its mandatory greenhouse gas (GHG) reporting program**. Under 40 CFR Part 98, facilities in certain industrial categories that directly emit more than 25,000 metric tons of carbon dioxide equivalent must report their GHG emissions to EPA annually following source category-specific protocols; suppliers of certain fossil fuels and industrial gases also must report emissions associated with their products. Among stationary sources, the data released by EPA show that power plants were by far the largest GHG producers in 2010, accounting for 72.3% of GHG emissions among direct emitters required to report under the program; refineries and chemical plants were second and third with 5.7% and 5.4% of reported GHG emissions, respectively. Twelve additional source categories will report for the first time in 2012. EPA has developed an easy-to-use online data publication tool that allows users to view GHG data in a variety of ways, including by location, facility, industrial sector, or state. The data can be found on EPA's website at: www.epa.gov/climatechange/emissions/ghgdata.

Implications: The data provide a snapshot of recent GHG emissions from larger sources.

FEDERAL: EPA set **the renewable fuel standards (RFS) that will apply to all gasoline and diesel transportation fuel produced or imported during calendar year 2012**. Under the RFS program, gasoline and diesel producers and importers must use an increasing percentage of four types of renewable fuel: cellulosic biofuel, biomass-based diesel, advanced biofuel, and renewable fuel. To implement the RFS, EPA established a credit program under which every gallon of renewable fuel is assigned a unique number which is transferred along with the fuel. Refiners, blenders and importers subject to the RFS program must have sufficient RFS credits to meet their obligations under the program. With the current rulemaking, EPA established the 2012 volume percentage standards for the four types of fuel subject to the RFS program. As required by the CAA, EPA set the cellulosic biofuel standard based on the volume projected to be available during the upcoming year; however, EPA declined to lower the advanced biofuel and renewable standards to address the gap between the projected and statutory cellulosic biofuel levels after concluding that there were sufficient quantities of other advanced biofuels available. EPA also announced that it is continuing to evaluate the appropriate volume of biomass-based diesel in fulfillment of the statutory requirement that the minimum volume of this fuel type be at least 1 billion gallons in 2013 and beyond. The RFS rule took effect January 9, 2012 and can be found in the Federal Register issued on that date at: www.gpo.gov/fdsys.

Implications: The RFS rule is primarily of interest to motor vehicle fuel producers, blenders, importers and distributors.

WATER

FEDERAL: EPA announced the **release of its Discharge Monitoring Report (DMR) Pollutant Loading Tool**. The tool consolidates data collected during the last several years from facilities required to submit DMRs under National/State Pollutant Discharge

Elimination System (NPDES/SPDES) permits. The Pollutant Loading Tool can be used to determine who is discharging, what pollutants they are discharging, how much, and where. Pollutant loadings are presented as pounds per year and as toxic-weighted pounds per year to account for variations in toxicity among pollutants. The tool ranks dischargers, industries and watersheds based on pollutant mass and toxicity. For example, a search by zip code provides the following information: a list of facilities with NPDES permits; top pollutants; top SIC discharges; and top facility discharges. The search includes results in both pounds and toxic-weighted pounds. The tool also includes wastewater pollutant discharge data from EPA's Toxic Release Inventory (TRI), enabling comparisons between DMR and TRI data. The DMR Pollutant Loading Tool can be accessed on EPA's website at: cfpub.epa.gov/dmr.

Implications: The tool allows users to obtain information about discharges from facilities with NPDES/SPDES permits and compare discharges among facilities.

Other Recent Developments (Proposed)

AIR

FEDERAL: EPA proposed determinations relating to the ozone nonattainment status of the New York City metropolitan area which was designated a severe ozone nonattainment area under the 1-hour ozone national ambient air quality standard (NAAQS) and moderate nonattainment under the 1997 8-hour ozone NAAQS. With respect to the 1-hour ozone NAAQS, EPA proposed to determine that the area previously failed to attain the standard by the 2007 deadline; this determination, if finalized, would trigger Clean Air Act (CAA) § 185, which requires major stationary sources in severe ozone nonattainment areas that fail to achieve attainment by the statutory deadline to pay per ton emission fees. EPA also proposed to find that the area is currently meeting the 1-hour standard based on 2008-2010 data, potentially relieving the state from having to impose contingency measures in the region. With respect to the 8-hour ozone NAAQS, EPA proposed to find that the area has attained and is currently attaining the standard, potentially relieving the state of the obligation to make certain submissions to EPA such as attainment demonstrations, reasonable further progress plans, and contingency measures. EPA is accepting comments on the proposed rule until **February 24, 2012**; the notice can be found in the January 25, 2012 Federal Register at: www.gpo.gov/fdsys.

Implications: The proposed rule is primarily of interest to major facilities in the downstate severe 1-hour ozone nonattainment area who may be required to pay additional fees under CAA § 185 as a result of the area's failure to attain the standard by the statutory deadline. The severe 1-hour ozone nonattainment area is comprised of New York City, Long Island, and Westchester, Rockland and southern Orange counties.

FEDERAL: EPA proposed findings under the National Emission Standards for Hazardous Air Pollutants program for various chemical production-related categories 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 (MACT) standards for sources in the following categories provide an ample margin of safety to protect public health and that no changes were necessary to address residual risk: (1) group IV polymers and resins (40 CFR Part 63, subpart JJJ); (2) pesticide active ingredient production (subpart MMM); and (3) polyether polyols production (40 CFR Part 63, subpart PPP). EPA also concluded in each case that there were no advances in practices, processes, and control technologies applicable to the emission sources and so proposed no revisions following the technology review. However, consistent with other recent NESHAP rulemakings, EPA proposed to require facilities to comply with MACT standards at all times, including during startup and shutdown, and establish an affirmative defense to civil penalties for exceedances of emission standards caused by malfunctions. Finally, EPA proposed to require electronic reporting of required performance test reports to EPA. EPA is accepting comments on the proposed rule until **March 9, 2012**; it can be found in the January 9, 2012 Federal Register at: www.gpo.gov/fdsys.

Implications: The revisions to the NESHAPs are primarily of interest to sources in the listed categories. EPA estimates that there are 35 facilities subject to the group IV polymers and resins standard, 17 facilities subject to the pesticide active ingredient production standard and 23 facilities subject to the polyether polyols production standard.

WATER

NEW YORK STATE: DEC made available for comment its **draft list of impaired waters required by Section 303(d) of the federal Clean Water Act**. The list, which is updated every two years, includes waters that do not support appropriate uses and identifies those waters that require and are scheduled for total maximum daily load (TMDL) development. As in previous years, the list includes segments that are impaired for a wide range of contaminants. In conjunction with the 303(d) list, DEC also made available for comment draft revisions to its Consolidated Assessment and Listing Methodology (CALM), which outlines the state's process for monitoring and assessing water quality. DEC is accepting comments on the draft 303(d) list and revised CALM until **March 2, 2012**; they can be found on DEC's website at: www.dec.ny.gov/chemical/31290.html.

Implications: Adoption of a TMDL for impaired waters may lead eventually to stricter SPDES permit limits and other discharge restrictions targeted at eliminating the impairment.

Recent Decisions

NEW YORK STATE: A New York trial court recently **annulled DEC's State Pollutant Discharge Elimination System general permit for stormwater discharges from municipal separate storm sewer systems (MS4s)** after finding, among other things, that the permitting process did not result in the issuance of permits that reduce pollutant discharges in accordance with statutory mandates. The MS4 general permit authorizes municipalities with MS4s to discharge stormwater provided they seek coverage under the permit and develop and implement a stormwater management program (SWMP) plan. In *Natural Resources Defense Council v. DEC*, petitioners alleged that the 2010 MS4 general permit violates the federal Clean Water Act because it fails to require MS4s to reduce

their discharges of pollutants to the “maximum extent practicable” as required by statute. The court agreed, noting that while submission of the notice of intent (NOI) form seeking coverage under the permit triggers the permit requirement, the permit itself does not require implementation of a SWMP plan for three years thereafter. Moreover, the permit does not require DEC to review the control measures to ensure that they will, in fact, reduce pollutant discharges to the maximum extent practicable. After reviewing a pair of federal court cases remanding a pair of EPA stormwater general permits back to the agency on similar grounds, the court concluded that DEC’s MS4 general permit was defective because it authorized permittees to discharge stormwater without any meaningful agency review of the control measures proposed to be implemented. The court also concluded that the MS4 permit violated federal and state clean water laws because the permitting scheme does not provide an opportunity for public hearings on the content of NOIs. According to the court, NOIs are the functional equivalent of applications for individual SPDES permits and must therefore be subject to public review. The court annulled the permit and directed DEC to issue revisions consistent with its decision. The decision can be found at: switchboard.nrdc.org/blogs/llevine/court_finds_new_york_state_fai.html by clicking on the link.

Implications: The decision raises questions about the legal status of MS4 discharges from hundreds of municipalities throughout the state that are currently covered by the MS4 general permit.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

February 3, 2012: Deadline for submitting comments on EPA’s proposed response to state recommendations regarding designation of nonattainment areas under the 2008 ozone NAAQS (extended from January 19, 2012). See the December 20, 2011 Federal Register at www.gpo.gov/fdsys for details.

February 3, 2012: Deadline for submitting comments on EPA’s proposed revisions to the mineral wool production and wool fiberglass manufacturing NESHAPs (extended from January 24, 2012). See the November 25, 2011 Federal Register at www.gpo.gov/fdsys for details.

February 6, 2012: Deadline for submitting comments on DEC’s proposed water withdrawal permit regulations (extended from January 22, 2012). See DEC’s website at www.dec.ny.gov/regulations/propregulations.html 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.

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 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 for details.

February 24, 2012: Deadline for submitting comments on EPA's proposed ozone attainment determinations relating to the New York City metropolitan area. See the January 25, 2012 Federal Register at www.gpo.gov/fdsys 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 for details.

February 28, 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 (extended from February 13, 2012). See the December 30, 2011 Federal Register at www.gpo.gov/fdsys for details.

March 2, 2012: Deadline for submitting comments on DEC's draft New York State 2012 Section 303(d) List of Impaired Waters and key components of its Consolidated Assessment and Listing Methodology. See DEC's website at www.dec.ny.gov/chemical/31290.html 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 for details.

March 5, 2012: Public hearing on DEC's proposed CO₂ emission standards and environmental justice review requirements for major electric generating facilities under the Power NY Act scheduled for 3:00 p.m. at DEC Headquarters, 625 Broadway, Albany. NOTE: Additional public hearings are scheduled later in the week in New York City and Buffalo.

March 6, 2012: Deadline for submitting comments on EPA's uniform standards for heat exchangers proposed in conjunction with revisions to the petroleum refinery NESHAP. See the January 6, 2012 Federal Register at www.gpo.gov/fdsys for details.

March 9, 2012: Deadline for submitting comments on EPA's proposed revisions to the Group IV polymers and resins, pesticide active ingredient production, and polyether polyols production NESHAPs. See the January 9, 2012 Federal Register at www.gpo.gov/fdsys for details.

March 15, 2012: Deadline for submitting comments on DEC's proposed CO₂ emission standards and environmental justice review requirements for major electric generating facilities under the Power NY Act. See DEC's website at www.dec.ny.gov/regulations/propregulations.html for details.

March 30, 2012: Deadline for submitting comments on EPA's proposed revisions to the chemical manufacturing area source NESHAP. See the January 30, 2012 Federal Register at www.gpo.gov/fdsys for details.