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ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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Final Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<p>WATER</p> <p>FEDERAL</p> <p>New York State Regional Permit Conditions for Reissuance and Modification of Army Corps Nationwide Permits</p>	<p>The New York and Buffalo Districts of the U.S. Army Corps of Engineers (ACOE) issued regional conditions in the wake of last month's revisions of the ACOE's nationwide permits (NWP's). Individuals proposing to undertake activities that will disturb wetlands or waterways frequently must obtain a permit from the ACOE. To streamline the permit approval process, the ACOE has issued NWPs for project categories that typically result in minimal disturbances. With the recent rulemaking, the ACOE added new NWPs for land-based renewable energy generation facilities and water-based renewable energy generation pilot projects; revised the text of numerous other NWPs; and added new general conditions.</p> <p>Following issuance of the revised NWPs, the New York and Buffalo Districts published final regional conditions for numerous NWPs, including, but not limited to: NWP 3, Maintenance; NWP 7, Outfall Structures and Associated Intake Structures; NWP 10, Mooring Buoys; NWP 11, Temporary Recreational Structures; NWP 12, Utility Line Activities (extensive regional conditions); NWP 13, Bank Stabilization; NWP 29, Residential Developments; NWP 35, Maintenance Dredging of Existing Basins; NWP 38, Cleanup of Hazardous and Toxic Waste; NWP 41, Reshaping Existing Drainage Ditches; NWP 45, Repair of Uplands Damaged by Discrete Events; NWP 48, Existing Commercial Shellfish Aquaculture Activities; and NWP 52, Water-Based Renewable Energy Generation Pilot Projects. In addition, the Buffalo and New York Districts issued general regional conditions relating to construction best management practices, loss of bogs and fens, and national wild and scenic rivers. The Districts also require the submission of additional information in conjunction with preconstruction notifications. Finally, the Districts identified critical resource waters where certain activities either cannot be authorized under a NWP or require a preconstruction notification. The Districts issued these conditions to address the specific needs of the region.</p> <p>The regional conditions can be found on the ACOE's New York District website at: www.nyan.usace.army.mil/business/buslinks/regulat/pnotices/PropRegConds.pdf.</p>	<p>The new/reissued nationwide permits authorize certain activities that could potentially disturb wetlands or waterways. Applicants for certain NWPs must submit written preconstruction notifications. In addition, applicants must satisfy ACOE regional conditions and conditions imposed by the state to preserve coastal zone consistency or protect water quality (via the water quality certification process). Certain regional conditions apply throughout New York State while others apply only in the Buffalo or New York Districts.</p>	<p>The ACOE regional conditions took effect March 19, 2012.</p> <p>As discussed below, DEC is currently seeking comment on water quality certifications required to authorize the NWPs in New York. In many cases, DEC is imposing conditions in addition to those specified in the NWPs as modified by the ACOE New York and Buffalo Districts. Also certain NWPs have been denied water quality certifications altogether.</p>



Citation	Summary	Implications	Schedule/Notes
<p>FEDERAL Revisions to Hazard Communication Program 29 CFR 1910.1200 and related provisions 77 Fed. Reg. 17574 (Mar. 26, 2012)</p>	<p>The Occupational Safety and Health Administration (OSHA) adopted major changes to its existing hazard communication standard (HCS) to conform to the United Nations' (UN) Globally Harmonized System of Classification and Labeling of Chemicals (GHS). The HCS seeks to educate workers concerning chemicals in the workplace through a combination of labeling, safety data sheets (SDS), and training. With this rulemaking, OSHA revised its existing HCS to conform to the GHS. Major changes include:</p> <ul style="list-style-type: none"> Revising the criteria for classifying chemical hazards to adopt the physical and hazard classes in the GHS and most of the hazard categories within those classes. Under the revised HCS, each hazard or endpoint (e.g., explosives, carcinogenicity) is considered a hazard class; a class may, in turn, be subdivided into hazard categories. For example, carcinogens are divided into known/presumed and suspected human carcinogens. The revised HCS includes hazard categories/classes as well as rules governing the classification of mixtures. In addition, OSHA included a "hazard not otherwise classified" category as well as special rules for pyrophoric gases, simple asphyxiants, and combustible dusts, which are not addressed by the GHS. Requiring all labels to include four new, standardized elements: a signal word (either DANGER or WARNING); pictograms illustrating the particular hazard consisting of a red-framed diamond surrounding a picture (e.g., flame, gas cylinder, skull and crossbones); hazard statement describing the hazard(s) associated with the particular chemical (e.g., for corrosives, skin corrosion or burns, eye damage, corrosive to metals); and precautionary statements containing the recommended measures to protect against hazard exposures or improper storage or handling of a chemical. Requiring SDS to present information using consistent headings in the sequence specified in the GHS. The new SDS consists of 16 sections, with information required in an emergency located at the beginning of the document. <p>The rule can be found in the March 26, 2012 Federal Register at: www.gpo.gov/fdsys.</p>	<p>The revisions will affect chemical manufacturers and suppliers who must revise their labels and SDS to conform to the new standards. In addition, employers must update their training and written HCS programs.</p> <p>The existing HCS is performance-driven, establishing general criteria for classifying hazards and communicating them to workers. By comparison, the new rule specifies the precise form and content of labels and SDSs. According to OSHA, standardizing labels and SDSs improves communication and comprehension.</p> <p>Following public comment, OSHA revised the proposed rule to: (1) rename unclassified hazards "hazards not otherwise classified" and provide specific guidance on addressing pyrophoric gases, simple asphyxiants, and combustible dust; (2) authorize the omission of precautionary statements from the label where the responsible party can show that they are inappropriate; and (3) extend the proposed effective dates.</p>	<p>The new HCS rule takes effect May 25, 2012. The rule must be implemented in accordance with the following schedule:</p> <ul style="list-style-type: none"> (1) train employees on new label elements and SDS format – December 1, 2013; (2) comply with all modified provisions of final rule – June 1, 2015 (December 1, 2015 deadline for distributors to ship containers labeled by the manufacturer or importer with a non-conforming label); and (3) update alternative workplace labeling and hazard communication program and provide additional employee training regarding newly identified hazards – June 1, 2016. During the phase-in period, employers can comply with the existing HCS, revised HCS, or both.



Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<p>AIR</p> <p>FEDERAL</p> <p>Uniform Standards for Storage Vessel and Transfer Operations, Equipment Leaks, and Closed Vent Systems and Control Devices; Revisions to Proposed National Uniform Emission Standards</p> <p>General Provisions</p> <p>40 CFR Part 65, subparts H, I, J, and M</p> <p>77 Fed. Reg. 17898 (Mar. 26, 2012)</p>	<p>EPA proposed to create national uniform standards for storage vessel and transfer operations, equipment leaks, and closed vent systems and control devices that would eventually apply to petroleum refineries and synthetic organic chemical manufacturing facilities regulated under the National Emission Standards for Hazardous Air Pollutants (NESHAP) and New Source Performance Standards (NSPS). As described by EPA, rules relating to applicability, emission limits, and control levels would generally be contained in the NESHAP/NSPS while monitoring, testing, recordkeeping and reporting requirements would be contained in the uniform rules. As EPA revises NESHAPs and NSPS the agency will cross-reference the uniform standards and adopt appropriate category-specific changes. The rationale for concluding that the uniform standards are consistent with particular statutes will be included in the rulemaking, as will any category-specific requirements. The proposed rule includes the following provisions:</p> <ul style="list-style-type: none"> • General provisions (subpart H). Additional changes to the general provisions proposed in January in conjunction with EPA's uniform standards for heat exchange systems. • Standards for storage vessels and transfer operations (subpart J). New uniform standards addressing: determination of maximum true vapor pressure; standards and compliance requirements for various types of storage vessels (e.g., design, operation, monitoring, inspection, repair); and recordkeeping and reporting. • Standards for equipment leaks (subpart J). New uniform standards addressing: identification of equipment; designation of special equipment; standards and compliance requirements for valves, pumps, connectors, agitators, and other equipment; equipment leak monitoring and repair; alternative equipment leak standards; and notification, recordkeeping and reporting. • Control devices (subpart M). New uniform standards addressing: monitoring and other requirements for control equipment; testing; design evaluation; and recordkeeping and reporting. <p>The proposed rule can be found in the March 26, 2012 Federal Register at: www.gpo.gov/fdsys.</p>	<p>EPA estimates that there are currently about 600 major source facilities in the petroleum refinery and synthetic organic chemical manufacturing industries.</p> <p>Many of these facilities are subject to multiple and occasionally conflicting NESHAPs and NSPS regulating similar activities. EPA's proposal to create uniform standards represents an attempt to simplify the rule development and implementation process by adopting uniform standards 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 June 25, 2012.</p>

Citation	Summary	Implications	Schedule/Notes
<p>FEDERAL Greenhouse Gas Tailoring Rule Step 3 40 CFR Parts 51, 52, 70, and 71 77 Fed. Reg. 14226 (Mar. 8, 2012)</p>	<p>EPA proposed Step 3 of its controversial greenhouse gas (GHG) tailoring rule establishing special major source thresholds for GHG emissions from new and modified sources under the Prevention of Significant Deterioration (PSD) program and, by extension, the Title V operating permit program. Because GHGs are emitted in significantly higher quantities than other pollutants, EPA adopted “tailored” GHG major source thresholds, to be implemented in several stages. During the second stage, which took effect July 1, 2011, new sources with the potential to emit 100,000 tons per year (tpy) or more of carbon dioxide equivalent (CO₂e) were subject to PSD; changes at existing major sources that result in a net increase of 75,000 tpy or more CO₂e also trigger PSD.</p> <p>At the time it adopted the tailoring rule, EPA committed to implementing another rule (Step 3) addressing possible further changes to the PSD program as applied to GHGs. The recent proposal fulfills that commitment. Among other things, EPA proposed to: (1) maintain the applicability thresholds at the current levels after concluding that the states lack the resources to process additional permits; (2) allow the permitting authority to issue GHG plantwide applicability limits (PALs) on either a mass-basis (tpy) or CO₂e-basis and allow PALs to be used as an alternative approach for determining whether a project is a major modification and whether GHG emissions are subject to regulation; and (3) create a regulatory authority for EPA to issue synthetic minor limitations in areas subject to a GHG PSD federal implementation plan.</p> <p>The GHG tailoring rule proposal can be found in the March 8, 2012 Federal Register at: www.epa.gov/ttdsys.</p>	<p>Adoption of the tailoring rule extended the PSD program to newly constructed/modified facilities that exceed the 100,000/75,000 tpy thresholds for GHGs. Facilities that trigger PSD for GHGs must identify best available control technology to reduce GHG emissions, which typically involves energy efficiency projects. Also, new and existing sources with emissions exceeding the GHG major source thresholds must obtain a Title V permit. Pollutants regulated as GHGs under the rule are CO₂, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride.</p>	<p>EPA is accepting comments on the proposed rule until April 20, 2012.</p> <p>EPA’s GHG tailoring rule is extremely controversial and several bills have introduced in Congress to repeal it; also, opponents have challenged the rule in court.</p>



Citation	Summary	Implications	Schedule/Notes
<p>NEW YORK STATE Water Quality Certification for Reissued Nationwide Permits</p>	<p>DEC made available for comment its water quality certification (WQC) for the ACOE's recently-issued nationwide permits discussed above. Under the Clean Water Act (CWA), DEC must certify that permits involving discharges to navigable waters will comply with CWA requirements. With respect to the NWRPs, DEC must determine for each permit whether to issue a blanket WQC, a WQC with conditions, or a denial. DEC's draft WQCs fall into four categories:</p> <ul style="list-style-type: none"> • <i>NWRPs requiring no WQC because they are authorized only under Section 10 of the Rivers and Harbors Act of 1899.</i> This category covers nine NWRPs. • <i>Blanket WQC granted for NWRPs provided the project meets all required general conditions.</i> This category covers 28 NWRPs. Projects seeking coverage under one or more of these permits must comply with the general conditions spelled out in the WQC. These general conditions address monitoring, installation and maintenance of culverts, discharges and disturbances, maintenance of water levels, dewatering, endangered and threatened species, prohibition periods for in-stream work, and aquatic habitat, among many other subjects. • <i>Blanket WQC granted for NWRPs provided project meets specific conditions and required general conditions.</i> This category covers five NWRPs and requires compliance with permit-specific special conditions in addition to the general conditions referenced above. • <i>Permits denied WQCs.</i> The following NWRPs were denied WQCs, meaning project sponsors must obtain an individual permit for these activities from the ACOE before proceeding: hydropower projects, surface coal mining activities, cleanup of hazardous and toxic waste, mining activities, coal remaining activities, underground coal mining activities, land-based renewable energy generation facilities, and water-based renewable energy pilot projects. <p>DEC's draft WQC can be found on its website at: www.dec.ny.gov/permits/6061.html. In a related development, the New York Department of State published notice of its coastal zone consistency determination in the March 14, 2012 State Register at: www.dos.ny.gov/info/register/2012/mar14/pdfs/miscellaneous.pdf.</p>	<p>The WQC is of interest to anyone engaging in activities that could potentially disturb wetlands or waterways and so require an ACOE permit. DEC's decision to deny WQC to certain NWRPs means these permits are unavailable in New York and that applicants must obtain an individual permit from the ACOE. The majority of other NWRPs are subject to additional conditions imposed by the WQC.</p>	<p>DEC is accepting comments on the draft WQC until April 12, 2012. The deadline for submitting comments on the Department of State's consistency determination is April 13, 2012.</p>



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<p>NEW YORK STATE SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity GP-0-12-001</p>	<p>DEC is proposing to renew the State Pollutant Discharge Elimination System (SPDES) Multi-Sector General Permit (MSGP) for Stormwater Discharges Associated with Industrial Activity, which is scheduled to expire September 30, 2012 following a recent extension. The MSGP covers discharges of stormwater from facilities in certain industrial categories. Potentially regulated facilities must notify DEC that they intend to be covered by the MSGP and prepare a stormwater pollution prevention plan (SWPPP). Assuming coverage is granted, the facility must implement the SWPPP and comply with the general and sector-specific conditions in the MSGP. These sector-specific requirements typically address applicability, site maps, potential pollutant sources, stormwater controls, numeric emission limits, and benchmark monitoring. Facilities can escape coverage under the MSGP if they can certify that their industrial activities are not exposed to stormwater.</p> <p>Major changes contained in the proposed MSGP include:</p> <ul style="list-style-type: none"> • <i>Updated lists of best management practices (BMP) options.</i> The facility must evaluate the applicability of BMPs and explain in the SWPPP why any BMPs identified in a particular instance are not appropriate for the facility. • <i>Additional monitoring.</i> Facilities must conduct additional monitoring if benchmarks or numeric limits are exceeded to demonstrate that corrective actions taken in response to the exceedances have been effective. • <i>Lower benchmark monitoring cutoff concentrations</i> to reflect benchmarks in EPA's 2008 MSGP. • <i>Dropping forms from the permit</i> to allow DEC to more easily revise them. • <i>Created separate forms</i> for Notice of Intent, Notice of Termination and Notice of Modification in place of a single Notice of Intent and Termination form. <p>DEC also reformatted the core permit and sector-specific sections to make them easier to read and understand.</p> <p>The draft MSGP and related materials can be found on DEC's website at: www.dec.ny.gov/chemical/41392.html.</p>	<p>The permit affects industrial facilities in specific source categories that discharge stormwater through a point source and are not covered by an individual SPDES permit. The list of covered sectors includes most major manufacturing activities as well as activities such as: automobile salvage yards; scrap recycling and waste recycling facilities; land transportation and/or warehousing; water transportation; ship and boat building or repair yards; air transportation; and treatment works. In addition, DEC has created Sector AD, which allows DEC to authorize coverage for stormwater discharges from industrial activities not covered by Sectors A-AC where it concludes that the MSGP is preferable to an individual permit. Finally, Sector AE, Department of Public Works and Highway Maintenance Facilities, establishes requirements for these facilities that apply only if DEC specifically notifies the facility that coverage is needed.</p>	<p>DEC is accepting comments on the draft permit until April 30, 2012.</p>



Other Recent Developments (Final)

AIR

FEDERAL: EPA issued a final rule retaining the existing secondary (welfare-based) national ambient air quality standards (NAAQS) for nitrogen and sulfur oxides pending further study of the feasibility of issuing a joint standard based on the collective impacts of these pollutants on sensitive aquatic systems. EPA assessed the environmental impacts of nitrogen oxides (NOx) and sulfur oxides (SOx) together after concluding that they are linked from an atmospheric chemistry perspective and contribute jointly to ecological effects such as acid rain. After conducting various studies required as part of the NAAQS review process, EPA published a policy assessment that proposed to link ambient air concentrations of NOx and SOx to the acid neutralizing capacity of surface waters through creation of an aquatic acidification index (AAI). Ultimately, however, EPA decided not to finalize the AAI in the face of data gaps and uncertainties regarding application of the standard. Instead, EPA opted to retain the existing secondary standards for NOx and SOx pending further study. To assemble the information needed to develop an appropriate multipollutant standard, EPA plans to conduct a five-year pilot test program to collect and analyze data from three to five locations in acid-sensitive ecoregions with the goal of evaluating the performance of established methods, data retrieval and reporting procedures used in the AAI equation. The final rule can be found in the April 3, 2012 Federal Register at: www.gpo.gov/fdsys.

Implications: The rule delays for at least five years EPA's adoption of a secondary NAAQS addressing the combined impact of NOx and SOx on the environment.

FEDERAL/NEW YORK STATE: EPA approved revisions to New York's state implementation plan (SIP) incorporating recent changes to various reasonably available control technology (RACT) standards adopted to help the state achieve the ozone national ambient air quality standards. The rules found to be consistent with the Clean Air Act are: (1) 6 NYCRR Part 228, surface coating, which was revised to add RACT standards for adhesives, sealants, and primers and make other changes; (2) 6 NYCRR Part 234, graphic arts, which was revised to cover letterpress printing processes and implement major changes to the available compliant ink and emission control compliance options, among other changes; and (3) 6 NYCRR Part 241, asphalt pavement and asphalt-based surface coatings, which consolidated the volatile organic compound (VOC) content standards for asphalt materials into a new part and incorporated changes to reduce VOC emissions associated with these materials. EPA's approval can be found in the March 8, 2012 Federal Register at: www.gpo.gov/fdsys.

Implications: EPA's approval of the rules means that the standards can now be enforced by EPA and citizens as well as DEC.

CHEMICAL

FEDERAL: EPA changed the way threshold planning quantities (TPQs) are determined for extremely hazardous substances (EHSs) that are non-reactive solid chemicals in solution form. Under section 302 of the Emergency Planning and Community



Right-to-Know Act (EPCRA), facilities that store EHSs above TPQs must notify the State Emergency Response Commission and Local Emergency Planning Committee and participate in local emergency planning activities. Previously, for purposes of determining whether a facility storing a non-reactive solid chemical in solution exceeds the TPQ, EPA required facilities to assume that 100% of the chemical could become airborne in the event of an accidental release. With this rulemaking, EPA is directing facilities to determine whether solids in solution exceed the TPQ by multiplying the amount of the chemical on-site by 0.2 in light of data showing a lower potential for solid chemicals in solution to remain airborne than previously thought. The rule does not affect a facility's hazardous chemical reporting obligations under 40 CFR Part 370 (submission of Tier II reports and material safety data sheets). The rule can be found in the March 22, 2012 Federal Register at: www.gpo.gov/fdsys.

Implications: The rule is potentially of interest to facilities that store solid chemicals in solution form and are subject to EPCRA § 302 notification and planning requirements for EHSs.

OTHER

FEDERAL: The federal Council on Environmental Quality issued **guidance identifying techniques for improving the timeliness and efficiency of the National Environmental Policy Act (NEPA) review process** following a public comment period. 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 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) coordinating reviews and documents under other applicable laws; (6) adoption of one agency's environmental impact statement by another agency; (7) expediting responses to comments; and (8) establishing clear time lines for NEPA review. The guidance can be found in the March 12, 2012 Federal Register at: www.gpo.gov/fdsys.

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

NEW YORK STATE: The New York Legislature adopted an on-time budget that included the following environmental items of interest: (1) \$102 million in New York Works Funds to repair aged dams and flood control infrastructure (leveraging \$100 million in matching funds); (2) expansion of the exemption from hazardous waste generation fees for recycled hazardous wastes to include generators that recycle more than 4,000 tons per year of hazardous waste or hazardous wastewater (with the fee calculated based on the net amount of hazardous waste or hazardous wastewater generated); (3) delay until December 31, 2013 the deadline for compliance with best available retrofit requirements for heavy-duty diesel vehicles owned or operated by or on behalf of a state agency. The following proposals were *not* included in the final budget: (1) funds for an assessment of the potential public health



impacts of high-volume hydraulic fracturing; and (2) a proposal to extend from 2012 to 2015 the requirement that all number 2 heating oil in the state have a sulfur content of no more than 15 parts per million. Assembly Bill No. A9058D can be found on the Assembly's website at: www.assembly.state.ny.us.

Other Recent Developments (Proposed)

HAZARDOUS WASTE

FEDERAL: EPA proposed to revise the rules governing the export of used cathode ray tubes (CRT). CRTs measure toxic for lead and are, therefore, a hazardous waste when disposed. In 2006, EPA adopted regulations to streamline the management of used CRTs. Among other things, companies exporting used CRTs for recycling must notify EPA 60 days prior to an intended shipment and provide information about the shipment; assuming it receives consent from the receiving country, EPA then provides the exporter with an Acknowledgement of Consent authorizing shipment. Companies exporting CRTs for reuse must submit a one-time notification to EPA and keep copies of business records documenting each shipment. With this rulemaking, EPA proposed changes intended to improve its ability to track exports, including: (1) adding a definition of "CRT exporter" to clarify who is responsible for fulfilling the CRT exporter's duties, including submitting export notices; (2) requiring companies exporting used CRTs for recycling to submit an annual report specifying how many CRTs were actually exported; and (3) replacing the current one-time notice submitted by companies exporting used CRTs for reuse with an annual notification. EPA also is accepting comment on other possible changes; these comments are due **May 14, 2012**. The proposed rule can be found in the March 15, 2012 Federal Register at: www.gpo.gov/fdsys.

Implications: The proposed rule is of possible interest to electronic waste collection and recycling companies that export CRTs for recycling or reuse.

WATER

NEW YORK STATE: DEC made available for comment a draft *Total Maximum Daily Load (TMDL) for Phosphorus in Onondaga Lake* prior to submitting the document to EPA. The TMDL specifies the quantity of pollutants that can be discharged to a water body and still attain applicable water quality standards (WQS). Where a water body is impaired, DEC must determine the reductions needed to achieve the WQS and allocate those reductions between point and nonpoint sources. The current draft document updates the phosphorus TMDL developed by DEC in 1998 that focused on reductions in phosphorus loading from Syracuse's wastewater treatment plants and combined sewer overflows (CSOs). The new draft TMDL updates the phosphorus load reduction allocation between point sources (wasteload allocation or WLA) and nonpoint sources (load allocation or LA), with a margin of safety. To achieve the WLA, the document calls for additional reductions from the Syracuse and Village of Marcellus treatment plants as well as implementation of green and grey infrastructure projects to reduce CSO volumes. In addition, municipalities in the



watershed covered by municipal separate storm sewer system general permits must implement measures to further reduce phosphorus loadings. The TMDL also discusses measures associated with construction and industrial stormwater, concentrated animal feeding operations, agricultural runoff, rural/unregulated development runoff, and Superfund remedial activities. DEC is accepting comments on the draft TMDL until **April 27, 2012**. It can be found on DEC's website at: www.dec.ny.gov/chemical/67594.html.

Implications: The TMDL may be of interest to facilities/activities that discharge wastewater/stormwater to the Onondaga Lake drainage basin.

OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: OSHA published a **request for information (RFI) regarding the safety risks associated with vehicle backovers**. The notice describes the risks associated with the activity, provides an overview of current applicable standards, and seeks data, information and comment on specific issues. OSHA conducted a review of incidents involving vehicle backovers, identifying 358 fatal incidents over a six-year period. After providing an overview of data and studies concerning the problem, OSHA reviewed current standards and backover prevention technology and methods and asked a series of questions seeking data, information and comment on relevant topics, including: backing with an obstructed view, audible backup alarms, studies, vehicle and backing safety system manufacturers, state regulations, internal traffic control plans, training and other subjects. OSHA also is seeking data, information and comment on the risks associated with **construction activities involving steel-reinforced concrete**. OSHA is accepting information in response to the RFI until **June 27, 2012**; it can be found in the March 29, 2012 Federal Register at: www.gpo.gov/fdsys.

Implications: The RFI is potentially of interest to employers that own/operate vehicles and mobile equipment such as forklift trucks and/or are engaged in construction activities involving steel-reinforced concrete.

OTHER

FEDERAL: EPA proposed to require all facilities to report nonconfidential information electronically under the Toxic Release Inventory (TRI) program effective **January 2, 2013** using software provided by the agency. The only exception to this requirement would be for trade secret forms and substantiation forms, which would continue to be submitted in hard copy. According to EPA, as of 2010, approximately 95% of all TRI submissions were made electronically; electronic submission is purportedly easier for facilities and helps EPA make information available to the public faster. EPA is accepting comment on the proposed rule until **May 4, 2012**; it can be found in the March 5, 2012 Federal Register at: www.gpo.gov/fdsys.

Implications: The proposed rule is of interest to any facility required to submit TRI reports.

NEW YORK STATE: DEC is accepting applications for New York's Annual Environmental Excellence Awards, which recognize businesses, educational institutions, governments, non-profit organizations, and individuals that have achieved



environmental excellence through innovative and environmentally sustainable practices or creative partnerships. Applicants must be in good standing with the Environmental Conservation Law and pertinent local laws; projects must go beyond standard techniques or regulatory requirements or demonstrate measurable environmental and economic benefits. Complete applications must include an application cover sheet and application checklist as well as project information, including a summary, general description, and information relating to: innovation, sustainability, and/or partnerships; superior practices; measurable environmental benefits; commitment and leadership in pursuit of environmental excellence; transferability to other users; funding sources; and other details and supporting documentation. Applications must be postmarked by **May 18, 2012**. The application form and instructions can be found on DEC's website at: www.dec.ny.gov/public/945.html.

Implications: The award program provides a way for companies to obtain public recognition of their pollution prevention and reduction efforts.

Recent Decisions

FEDERAL: The U.S. Supreme Court issued a decision authorizing the recipients of a Clean Water Act (CWA) compliance order to bring a civil action under the Administrative Procedure Act (APA) challenging the order. In *Sackett v. EPA*, 566 U.S. (2012), EPA accused the petitioners of filling a wetland in violation of the CWA and issued an order directing them to restore the site. After being denied a request for a hearing, the petitioners filed suit contending that EPA's issuance of the compliance order was arbitrary and capricious. The lower courts dismissed the suit after finding that the CWA precludes pre-enforcement judicial review of compliance orders. In a unanimous decision, the Supreme Court reversed, allowing the suit to proceed. As a preliminary matter, the Court concluded that the order was a final agency action and therefore potentially subject to judicial review. The Court went on to find that there was "no adequate remedy other than APA review" for this final agency action and that "the Clean Water Act does not preclude that review." In reaching its decision, the Court rejected EPA's argument that allowing judicial challenge of compliance orders under the APA would undermine the CWA, which authorizes EPA to bring a civil action or issue a compliance order to enforce the Act. The Court also rejected EPA's suggestion that Congress' decision to expressly authorize judicial review of administrative penalties but not compliance orders evinces an intent to bar such reviews under the APA. The decision can be found at: www.law.cornell.edu/supremecourt/text/10-1062.

Implications: The decision enables recipients of EPA compliance orders under the CWA and, potentially, other environmental statutes to challenge those orders in court.



Upcoming Deadlines

NOTE: This calendar contains items of general interest.

April 12, 2012: Deadline for submitting comments on DEC's draft water quality certification for the ACOE's recently reissued nationwide permits. The draft certification can be found on DEC's website at www.dec.ny.gov/permits/6061.html. **NOTE:** The deadline for submitting comments on the Department of State's NWP coastal zone consistency determination is April 13, 2012.

April 13, 2012: Deadline for submitting comments on EPA's proposed revisions to the secondary aluminum production NESHAP (extended from March 30, 2012). See the February 14, 2012 Federal Register at www.gpo.gov/fdsys for details.

April 14, 2012: Deadline for submitting comments on DEC's proposed revisions to its firewood management regulations. See DEC's website at www.dec.ny.gov/regulations/propregulations.html for details.

April 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 (extended from February 16, 2012). See the November 18, 2011 Federal Register at www.gpo.gov/fdsys for details.

April 20, 2012: Deadline for submitting comments on EPA's proposal to maintain the existing applicability thresholds for GHG emissions under the tailoring rule. See the March 8, 2012 Federal Register at www.gpo.gov/fdsys for details.

April 27, 2012: Deadline for submitting comments on DEC's draft Onondaga Lake phosphorus TMDL. See DEC's website at www.dec.ny.gov/chemical/67594.html for details.

April 30, 2012: Deadline for submitting comments on DEC's draft revisions to the *Design Standards for Intermediate-Sized Wastewater Treatment Systems* (extended from March 30, 2012). The draft can be found on DEC's website at www.dec.ny.gov/chemical/41392.html.

April 30, 2012: Deadline for submitting comments on DEC's renewed SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity, Permit No. GP-0-12-001. The draft MSGP can be found on DEC's website at www.dec.ny.gov/chemical/41392.html.

May 4, 2012: Deadline for submitting comments on EPA's proposal to require all facilities to submit TRI reports electronically. See the March 5, 2012 Federal Register at www.gpo.gov/fdsys for details.



May 14, 2012: Deadline for submitting comments on EPA's proposed revisions to the used CRT export rules. See the March 15, 2012 Federal Register at www.gpo.gov/fdsys for details.

May 18, 2012: Deadline for submitting application for DEC's Environmental Excellence Awards. See DEC's website at www.dec.ny.gov/public/945.html.

June 25, 2012: Deadline for submitting comments on EPA's proposed national uniform standards for storage vessel and transfer operations, equipment leaks, and closed vent systems and control devices. See the March 26, 2012 Federal Register at www.gpo.gov/fdsys for details.

June 27, 2012: Deadline for submitting comments on OSHA request for information regarding risks associated with preventing backover injuries and reinforced concrete in construction. See the March 29, 2012 Federal Register at www.gpo.gov/fdsys for details.