



ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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Final Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
AIR			
FEDERAL/NEW YORK STATE Designation of Nonattainment Areas under 8-hour Ozone NAAQS	<p>EPA issued ozone nonattainment area designations 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 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), both of which have been classified as marginal nonattainment. In all, EPA identified 45 ozone nonattainment areas, all but three of which were designated nonattainment for previous ozone standards.</p> <p>The final 2008 8-hour ozone NAAQS designations can be found at: www.epa.gov/ozonedesignations/2008standards/index.htm.</p>	The designations, 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.	
NEW YORK STATE Community Air Screen Program	<p>DEC is accepting applications for a new Community Air Screen Program, which enlists community groups and individuals to conduct air quality surveillance for air toxics at the community level using equipment provided by DEC. The program will utilize equipment that collects air over a one-hour period. Depending on the types of sources in the community, the same location may be sampled several times or multiple samplers may be used over the community. Once the samples are collected, the equipment will be returned to DEC for analysis. If air toxics are detected at levels of concern, DEC will conduct additional testing; if that testing confirms air toxics concerns, DEC will attempt to identify sources of the pollutant in the community. The results will not, however, be used for enforcement or compliance purposes. The focus of the program is on gaseous air toxics such as benzene (a component of gasoline), perchloroethylene (a common dry cleaning fluid), and methylene chloride (a solvent). DEC will consider the following information in deciding whether to grant an application: (1) the applicant's air quality concern and details about the applicant's sampling plan; (2) the health risk associated with the pollutants identified or suspected; and (3) whether the community of concern is an environmental justice area. Approximately 12 to 18 applicants will be selected for the program; a total of 60 air samples will be analyzed.</p> <p>Information about the sampling program can be found on DEC's website at: www.dec.ny.gov/public/81629.html.</p>	The program is of interest to both community groups and industry. Confirmed results showing air toxics at levels of concern will result in additional DEC scrutiny of possible sources of pollutants in the area.	Local community groups or citizens interested in participating in the program must submit an application to DEC by May 24, 2012 (e-mail or postmarked).

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
CLIMATE CHANGE			
FEDERAL New Source Performance Standards for Greenhouse Gas Emissions from Power Plants 40 CFR Part 60, subpart TTTT 77 Fed. Reg. 22392 (Apr. 13, 2012)	<p>EPA proposed long-awaited New Source Performance Standards (NSPS) limiting carbon dioxide (CO₂) emissions from new fossil fuel-fired electric generating units (EGUs) – a category that includes boilers, integrated gasification combined cycle units, and combined cycle units that generate electricity for sale and meet certain size criteria. In the wake of a 2007 Supreme Court decision declaring that greenhouse gases (GHGs) are pollutants, EPA found that such emissions endanger public health and welfare because they contribute to climate change and signed a consent agreement with environmental groups committing to develop NSPS for GHG emissions from EGUs. The proposed standard fulfills that commitment. The rule, which will be set forth at 40 CFR Part 60, subpart TTTT, requires all new EGUs to meet an output-based emission rate of 1,000 pounds of CO₂ per megawatt-hour (lb/MWh) based on the performance of widely-used natural gas combined cycle (NGCC) units. Coal and pet coke-fired EGUs can meet the limit either by employing carbon capture and storage (CCS) of approximately 50% of the CO₂ in exhaust gas at startup or through later application of more effective CCS to meet the standard on average over a 30-year period. Coal and pet coke-fired EGUs pursuing the latter option must meet an immediate performance standard of 1,800 CO₂ lb/MWh on a 12-month annual average basis. By no later than the beginning of the 11th year, the facility must meet a reduced CO₂ emission limit of 600 CO₂ lb/MWh for the remainder of the 30-year averaging period.</p> <p>NSPS typically apply to both new and modified sources in a particular source category. In this case, however, EPA concluded that it did not have a sufficient base of information to develop a CO₂ emission standard for modifications. As a result, the standard applies only to new EGUs. Modifications to existing sources and so-called “transitional sources” (i.e., sources that had been issued a preconstruction permit by the date of proposal and commence construction within 12 months of the date of proposal) are not subject to the NSPS.</p> <p>The proposed rule can be found in the April 13, 2012 Federal Register at: www.gpo.gov/fdsys.</p>	<p>The rule is primarily of interest to companies contemplating the construction of new EGUs. EPA anticipates that all newly constructed natural gas-fired units will be able to meet the 1,000 CO₂ lb/MWh standard by installing the NGCC technology on which the standard is based. Because of the recent decline in the price of natural gas, EPA does not anticipate the construction of any new coal-fired power plants in the foreseeable future. Assuming the NSPS is adopted, any newly constructed coal and pet coke-fired units would need to be equipped with CCS to meet the 1,000 CO₂ lb/MWh standard.</p>	<p>EPA is accepting comments on the proposed rule until June 25, 2012 (extended from June 12, 2012).</p>

Citation	Summary	Implications	Schedule/Notes
OTHER			
<p>NEW YORK STATE Power Plant Siting Rules 16 NYCRR Parts 1000-1002</p>	<p>The New York State Board on Electric Generation Siting and the Environment (Siting Board) proposed regulations implementing the power plant siting requirements of the Power NY Act of 2011, which created a new statewide framework for siting and repowering electric generating facilities. The regulations, which will be set forth at 16 NYCRR Parts 1000-1002, contain the procedures for obtaining an Article 10 Certificate of Environmental Compatibility and Public Need, covering everything from pre-application procedures through compliance filings. Key sections of the regulations address:</p> <ul style="list-style-type: none"> • Public involvement, containing procedures for ensuring public participation throughout the review process. The regulation requires submission of a proposed public involvement program for review at least 150 days prior to submitting the preliminary scoping statement. • Pre-application procedures addressing submission of a preliminary scoping statement containing an overview of the project, its environmental impacts, and any applicable laws and permits. • Procedure for processing applications for certificates, addressing filing and service requirements, publication and content of notices, and water quality and coastal certification procedures. • Creation of a fund for municipal and local parties to facilitate their participation in the review process. • Evidence and burden/standard of proof applicable during proceedings involving contested certificates. <p>The proposed regulations also contain detailed directions on the content of the application itself, identifying a total of 41 exhibits that may need to be included with the application and their content/format. A partial list of exhibits includes: overview and public involvement, location of facilities, land use, electric system effects, electric system production modeling, alternatives, consistency with energy planning objectives, preliminary design drawings, construction, real property, cost of facilities, public health and safety, various environmental impacts, and local and state laws and regulations, among many others.</p> <p>The proposed regulations can be found on the Siting Board’s website at: www.dps.ny.gov/SitingBoard.</p>	<p>The Article 10 procedures apply to new electric generating facilities with a nameplate capacity of at least 25 MW and modified or repowered facilities. Earlier this year, DEC proposed greenhouse gas emission standards and procedures for conducting environmental justice reviews in fulfillment of the requirements of the Power NY Act.</p>	<p>The Public Service Commission is accepting comments on the proposed regulations until May 29, 2012.</p>

Other Recent Developments (Final)

AIR

FEDERAL: EPA **revised its standards for major and area polyvinyl chloride and copolymers (PVC) production facilities** under the National Emission Standards for Hazardous Air Pollutants (NESHAP) program. Section 112 of the Clean Air Act (CAA), 42 USC § 7412, requires EPA to establish technology-based maximum achievable control technology (MACT) standards for major sources of hazardous air pollutants (HAPs). EPA adopted MACT standards for the PVC category in 2002 that used vinyl chloride emissions as a surrogate for all HAPs emitted from PVC production; these standards were vacated and remanded back to EPA after a federal court concluded that the agency failed adequately to explain the rationale for its approach. In response, EPA has adopted new emission limits and work practice standards under 40 CFR Part 63, subpart J, for total organic air toxics, vinyl chloride, chlorinated di-benzo dioxins and furans, and hydrogen chloride. Emission sources addressed in the rule include PVC process vents, stripped resin, equipment leaks, wastewater, heat exchangers, and storage vessels. EPA also revised the area source standards for PVC facilities, set forth at 40 CFR Part 63, subpart DDDDDD. The final rules can be found in the April 17, 2012 Federal Register at: www.gpo.gov/fdsys.

Implications: According to EPA, there are currently 15 major and two area source PVC facilities in the United States, none of which are located in New York.

NEW YORK STATE: DEC revised its incinerator regulations to **implement EPA's new emission standards for existing sewage sludge incinerators** set forth at 40 CFR Part 60, subpart MMMM. The federal rule establishes emission standards for multiple hearth and fluidized bed incinerators. As with other solid waste incinerator standards, the sewage sludge regulation limits emissions of cadmium, carbon monoxide, dioxins/furans, hydrogen chloride, lead, mercury, nitrogen oxides, particulate matter, and sulfur dioxide. Owners/operators of affected units must conduct performance tests and some continuous monitoring; they also must meet operator training and qualification requirements and comply with extensive recordkeeping and reporting requirements. With the recent rulemaking, DEC revised 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). The rule can be found on DEC's website at: www.dec.ny.gov/regulations/propregulations.html.

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

WATER

FEDERAL: EPA **adopted criteria for certain public water systems (PWS) to monitor new contaminants under the Safe Drinking Water Act** for purposes of assembling the data the agency needs to decide whether to regulate these contaminants. Every

five years, EPA must publish a list of no more than 30 unregulated contaminants to be monitored by PWS. The recent rule identifies the contaminants to be monitored, the monitoring methods to be used, and the schedule for completing the monitoring. The monitoring obligations differ depending on the size of the PWS; only a random selection of small PWS are required to monitor, with the costs paid for by EPA. The contaminants covered by the monitoring program include seven hormones, seven metals, 14 organic compounds, and two viruses. Following the public comment period, EPA added chromium-6 (hexavalent chromium) and total chromium to the list of contaminants scheduled for monitoring and deleted sec-butylbenzene and n-propylbenzene. The final rule can be found in the May 2, 2012 Federal Register at: www.gpo.gov/fdsys.

Implications: The rule is primarily of interest to owners/operators of public water systems.

Other Recent Developments (Proposed)

AIR

FEDERAL/NEW YORK STATE: EPA **proposed to partially approve and partially disapprove the revisions to New York's state implementation plan (SIP) addressing regional haze**. Under the federal regional haze rule, states must implement various measures designed to address regional haze problems, including requiring certain sources constructed between 1962 and 1977 to install best available retrofit technology (BART). With the recent rulemaking, EPA proposed to disapprove various BART determinations made by DEC, primarily because DEC either had not issued final permit modifications reflecting BART or had not submitted final permit modifications to EPA as a SIP revision. Going forward, EPA will issue a federal implementation plan unless DEC revises its SIP in a timely way. As part of the rulemaking, EPA proposed to approve New York's BART regulation, set forth at 6 NYCRR Part 249. The notice provides an overview of the regional haze program and assesses the status of each of the approximately 19 facilities in New York with "BART-eligible" sources. EPA is accepting comments on its regional haze SIP approval notice until **June 18, 2012**; it can be found in the April 25, 2012 Federal Register at: www.gpo.gov/fdsys.

Implications: The notice is primarily of interest to the power plants, cement manufacturers, and other miscellaneous sources identified as "BART-eligible".

WATER

NEW YORK STATE: DEC made available for comment a **draft guidance document intended to aid in the issuance of permits for residential open pile catwalks/docks and floating docks in tidal waters** regulated under 6 NYCRR Part 661. DEC typically issues several thousand tidal wetland permits a year, with docks and catwalks being one of the largest permit items requested. The draft guidance, DFW 6 – Residential Catwalks and Docks, establishes guidelines to assist staff in evaluating the compatibility of residential dock permit requests with on-site conditions and facilitating consistency with permit issuance standards. Subjects addressed by the guidance include: water depth, navigation, proper siting, property lines, dock/catwalk size, structure use, open grate decking, piling

size, seasonal structures, and treated wood, among other topics. The guidance also identifies site-specific factors that may call for further evaluation. DEC is accepting comments on the draft guidance until **May 9, 2012**; it can be found on DEC's website at: www.dec.ny.gov/lands/4940.html.

Implications: The guidance is primarily of interest to landowners, consultants and others involved in the design/construction of catwalks and residential docks in tidal waters.

CHEMICAL

FEDERAL: EPA proposed to expand the types of information required to be reported electronically under the Toxic Substances Control Act (TSCA). Under TSCA, EPA imposes testing and reporting requirements and occasional production bans on the manufacture of toxic chemicals. Among other things, TSCA gives EPA the authority to: require testing of chemicals where risks or exposures of concern are found (Section 4); require pre-manufacture notification prior to producing new chemical substances (Section 5); establish rules addressing significant new uses of existing chemicals (Section 5); and maintain an inventory of chemicals and impose recordkeeping and reporting requirements on persons who manufacture, import, process or distribute chemicals in commerce (section 8). With the current rulemaking, EPA proposed to expand the amount of information (e.g., forms, reports and other documents) required to be submitted electronically under TSCA using EPA's Central Data Exchange and Chemical Information Submission System, a web-based reporting tool. The proposed rule identifies the information/documents potentially subject to electronic reporting and solicits comments on several issues relating to the costs/benefits of electronic submission, confidentiality issues, and other subjects. EPA is accepting comments on the proposed rule until **June 18, 2012**; it can be found in the April 17, 2012 Federal Register at: www.gpo.gov/fdsys.

Implications: The proposed rule is primarily of interest to companies that manufacture, process or import chemicals. It is part of a larger EPA initiative to increase transparency and public access to chemical information.

Recent Decisions

NEW YORK STATE: New York's highest court recently decided that **communications between a federal and state agency were not exempt from disclosure under the State's Freedom of Information Law (FOIL)** as pre-decisional inter-agency or intra-agency materials. In *In re Town of Waterford v. New York State Department of Environmental Conservation*, 18 NY3d 652 (2012), the Town of Waterford sought information from DEC relating to the Hudson River dredging project and the availability of alternative water supplies for downstream residents. DEC denied access to certain records exchanged with EPA invoking the exemption from disclosure for inter-agency and intra-agency materials under Public Officers Law § 87(2)(g). The New York Court of Appeals concluded that the decision was in error, noting that the definition of "agency" in the statute was limited to state and municipal entities. It went on to reject an argument that the materials could be withheld under cases that have relied on the intra-agency exemption to ban disclosure of documents prepared by outside consultants on behalf an "agency".

NEW YORK STATE: A New York trial court recently **revised its decision invalidating DEC’s 2010 State Pollutant Discharge Elimination System general permit for stormwater discharges from municipal separate storm sewer systems (MS4s)** to remove the portion of the order annulling the permit. In *Natural Resources Defense Council v. DEC*, 940 NYS2d 437 (Westchester Co. Sup. Ct. 2012), the court annulled the 2010 MS4 permit and ordered DEC to make revisions after finding that the permit violates the federal Clean Water Act because it does not require MS4s to reduce their discharges of pollutants to the “maximum extent practicable” as required by statute. The court’s decision to annul the permit had raised questions about the legal status of MS4 discharges from the hundreds of municipalities throughout the state that are currently covered by the MS4 general permit. Under the revised decision, MS4s are expected to continue implementing their stormwater management programs while DEC reviews the permit in relation to the court’s decision.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

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 9, 2012: Deadline for submitting comments on DEC’s draft guidance DFW 6 – Residential Catwalks and Docks. See DEC’s website at www.dec.ny.gov/lands/4940.html 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.

May 24, 2012: Deadline for submitting application to participate in DEC’s Community Air Screen Program for monitoring air toxics. Information about the program can be found on DEC’s website at www.dec.ny.gov/public/81629.html.

May 29, 2012: Deadline for submitting comments on Siting Board’s proposed regulations implementing the new Article 10 process for reviewing applications to construct major electric generating facilities. Information about the proposed regulations can be found at www.dps.ny.gov/SitingBoard.

June 18, 2012: Deadline for submitting comments on EPA's proposed partial disapproval of New York's regional haze SIP. See the April 25, 2012 Federal Register at www.gpo.gov/fdsys for details.

June 18, 2012: Deadline for submitting comments on EPA's proposed rule expanding the list of information/documents required to be reported electronically under TSCA. See the April 17, 2012 Federal Register at www.gpo.gov/fdsys for details.

June 25, 2012: Deadline for submitting comments on EPA's proposed NSPS for CO₂ emissions from EGUs (extended from June 12, 2012). See the April 13, 2012 Federal Register at www.gpo.gov/fdsys for details.

June 25, 2012: Deadline for submitting comments on EPA's proposed national uniform air emission 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 use of reinforced concrete in construction. See the March 29, 2012 Federal Register at www.gpo.gov/fdsys for details.