



## **ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY**

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## Final Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<b>AIR</b>			
<p>FEDERAL  <b>Revisions to Rule Implementing 1997 8-Hour Ozone Standard</b>            40 CFR Parts 50, 51 and 81            77 Fed. Reg. 28434            (May 14, 2012)</p>	<p>EPA revised <b>the rules for implementing the 1997 8-hour national ambient air quality standard (NAAQS) for ozone to address key portions of the rule vacated by a federal court.</b> The rule established a two-tier scheme for implementing the 8-hour ozone standard based on whether the area had attained the then-existing 1-hour standard. Areas that failed to attain both the 1 and 8-hour standards were subject to the more prescriptive “subpart 2” provisions that impose nonattainment requirements based on the classification of the area (marginal, moderate, serious, severe or extreme). Areas that failed only the 8-hour standard were classified as “basic” nonattainment and given greater flexibility in deciding how to achieve the standard. A federal court rejected this approach, concluding that the threshold selected resulted in certain areas being improperly classified as basic nonattainment. With the recent rulemaking, EPA reclassified former basic ozone nonattainment areas as marginal, moderate, serious, severe or extreme based on various factors, including their attainment status as of 2004 (the date of initial classification) and on whether data showed that the area had achieved attainment as of 2007, the attainment deadline for marginal areas under the 1997 8-hour ozone NAAQS. Areas that were originally designated basic nonattainment and have since been redesignated attainment are not affected by the rule.</p> <p>Consistent with the court’s decision, EPA also expanded the list of measures that must remain in state implementation plans after the 1-hour ozone NAAQS is revoked (i.e., anti-backsliding provisions). Among other things, EPA withdrew language allowing states that met the 1-hour but not the 8-hour ozone standard as of 2004 to eliminate the stricter NSR requirements applicable under subpart 2.</p> <p>The rule can be found in the May 14, 2012 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>.</p>	<p>Under the rule, the following five areas in New York that had previously been identified as basic nonattainment have been reclassified under the 1997 8-hour ozone NAAQS as follows:</p> <ul style="list-style-type: none"> <li>• Capital Region (Albany, Greene, Montgomery, Rensselaer, Saratoga, Schenectady, and Schoharie counties): Marginal</li> <li>• Erie/Niagara Counties: Moderate</li> <li>• Essex County (Whiteface Mountain): Marginal</li> <li>• Chattaquua County: Moderate</li> <li>• Rochester area (Genesee, Livingston, Monroe, Ontario, Orleans, and Wayne counties): Marginal.</li> </ul> <p>The three areas classified as marginal attained the 1997 8-hour ozone NAAQS in 2007 (based on 2004-2006 data). However, they have not been formally redesignated attainment. All five areas have received clean data determinations from EPA.</p>	

## Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<b>CLIMATE CHANGE</b>			
NEW YORK STATE Request for Stakeholder Comments on RGGI Review	<p>The states participating in the Northeast Regional Greenhouse Gas Initiative (RGGI) <b>sought comment on the comprehensive 2012 review of the RGGI program required by the RGGI agreement.</b> The RGGI states established a multi-state carbon dioxide (CO<sub>2</sub>) trading program for power plants in the Northeast. With the expiration of the first control period at the end of 2011, the nine RGGI states are reviewing key components of the program with an eye toward making improvements. The following areas are under review:</p> <ul style="list-style-type: none"> <li>• <b>Offsets.</b> The RGGI program authorizes sources to generate additional CO<sub>2</sub> credits by undertaking projects to reduce greenhouse gas (GHG) emissions outside the regulated sector. To date, however, there have been no applications to register emission offsets under the program. Stakeholders have suggested several ways to improve the offset program, including: (1) making changes to the existing offset project categories; (2) expanding the list of acceptable projects; and (3) simplifying key aspects of the rules for approving offsets.</li> <li>• <b>Cost containment reserve (CCR) design.</b> The RGGI states are considering creating a CCR by setting aside allowances to be made available for sale if the price reaches a ceiling trigger. As part of this assessment, RGGI states sought input on issues such as whether allowances from the CCR should be auctioned or sold at a fixed sale price and whether participation in the auctions should be open to all qualified participants.</li> <li>• <b>Control period.</b> Currently, RGGI participants must provide allowances equal to emissions at the end of a three-year control period unless several triggering events occur. The RGGI sought input on whether the three-year period is appropriate or whether it should be shortened.</li> </ul> <p>The RGGI states also sought comment on the use of a current market reserve price.</p> <p>Information about the RGGI can be found at: <a href="http://www.rggi.org">www.rggi.org</a>.</p>	<p>The RGGI program applies only to power plants. Although the sale of CO<sub>2</sub> allowances under the RGGI program has generated many millions of dollars for renewable energy, energy efficiency and other similar projects, the RGGI program has not resulted in significant reductions in GHG emissions because actual emissions from participating sources have been well below the RGGI cap since the start of the program for various reasons, including the weak economy and the decision by many utilities to switch from petroleum and coal to natural gas.</p>	<p>The deadline for submitting comments on the 2012 RGGI review closed May 31, 2012.</p>

Citation	Summary	Implications	Schedule/Notes
<b>WATER</b>			
<b>NEW YORK STATE Environmental Benefit Permit Strategy Rankings</b>	<p>DEC made its <b>revised Environmental Benefit Permit Strategy (EBPS) rankings available for review</b>. The EBPS rankings prioritize State Pollutant Discharge Elimination System (SPDES) permits for full technical review based on criteria outlined in DEC guidance. The review under the EBPS program occurs independent of routine SPDES permit renewals. Each year, DEC publishes the priority list for central office, which handles most major industrial SPDES permits, and for each DEC regional office. SPDES permits on the top 10 percent of the list are scheduled for review in the coming year.</p> <p>The 2012/2013 list can be found on DEC's website at: <a href="http://www.dec.ny.gov/permits/6054.html">www.dec.ny.gov/permits/6054.html</a>.</p>	<p>Facilities in the top 10 percent of the EBPS rankings can expect their SPDES permits to be subject to a full technical review in the upcoming year.</p>	<p>Any interested party may submit a request to change a facility's rankings.</p>
<b>HYDRAULIC FRACTURING</b>			
<b>FEDERAL Permitting Guidance for Oil and Gas Hydraulic Fracturing Activities Using Diesel-Containing Fracking Fluid</b> 77 Fed. Reg. 27451 (May 10, 2012)	<p>EPA is accepting comment on a <b>draft guidance document clarifying the underground injection control (UIC) permit requirements for hydraulic fracturing activities involving diesel-containing fracturing (fracking) fluid</b>. Under the 2005 Energy Policy Act Congress revised the Safe Drinking Water Act to exclude hydraulic fracturing from the UIC permit program; however, the exemption does not apply to the injection of hydraulic fracturing fluids containing diesel fuels. As a result, hydraulic fracturing operations using fluids that contain diesel must obtain a Class II UIC permit. With the increase in hydraulic fracturing activities, significant questions have arisen about the scope of this provision. EPA's draft <i>Permitting Guidance for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels</i> identifies by Chemical Abstracts Service Registry Numbers the six types of diesel fuel proposed to be regulated under the UIC program. However, EPA is accepting comment on alternative descriptions of diesel fuel that focus more generally on its composition and characteristics (carbon number, boiling point, etc.). The draft guidance also contains recommendations on how permit writers should implement the UIC permitting requirements for activities involving diesel-containing fracking fluid with respect to permit duration, well closure, permit application and review, area of review, and well construction, operation, testing and monitoring.</p> <p>Notice of the guidance can be found in the May 10, 2012 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>. A link to the draft guidance document can be found in the notice.</p>	<p>If approved, the guidance would apply in states where EPA implements the UIC program. States that implement the UIC program themselves (so-called primacy states) are not directly subject to the guidance. However, these primacy states are required to issue UIC permits for fracking operations using diesel fuels and may rely on the guidance to define the scope of their permitting obligations. The guidance would apply directly to hydraulic fracturing activities in New York, which is not a primacy state.</p>	<p>EPA is accepting comment on the draft guidance until <b>July 9, 2012</b>.</p>

## Other Recent Developments (Final)

### AIR

FEDERAL: EPA **adopted the first two of three rules required to implement the 2008 revisions to the ozone NAAQS** in the wake of President Obama’s decision in September 2011 to abandon EPA’s review of that standard. The first rule contains thresholds for classifying nonattainment areas as marginal, moderate, serious, severe or extreme under the 0.075 part per million (ppm) 2008 8-hour ozone NAAQS. EPA classified areas using the “percent-above-the-standard” method used in conjunction with the 1997 8-hour ozone NAAQS. Under that method, EPA sets the classification thresholds based on the percentage difference between the original 1-hour ozone NAAQS and the limit assigned to each nonattainment classification in the Clean Air Act. The rule also contains attainment dates for areas in each nonattainment classification. On the same day, EPA issued a separate rule designating nonattainment areas under the 2008 ozone standard. EPA plans to propose a third rule addressing the steps states must take to implement the NAAQS and the timing of those steps. The recently-issued rules can be found in the May 21, 2012 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: EPA has identified two ozone nonattainment areas in New York under the 0.75 ppm 8-hour ozone standard – the New York City metropolitan area (comprising New York City, Long Island and Westchester and Rockland Counties) and Jamestown (Chautauqua County). Both have been classified as marginal nonattainment.

FEDERAL/NEW YORK STATE: EPA determined that **use of onboard refueling vapor recovery (ORVR) equipment is widespread enough in the motor vehicle fleet to eliminate the need for gasoline stations to be equipped with Stage II vapor recovery systems**. Under the CAA, gasoline stations in serious, severe and extreme ozone nonattainment areas must be equipped with Stage II systems that capture vapor displaced from the vehicle fuel tank during gasoline dispensing and route it to the facility’s storage tank. States may discontinue this requirement once ORVR systems are in widespread use among the nation’s vehicle fleet. With the current rulemaking, EPA has determined that ORVR is currently in widespread use; as a result, states previously required to implement the Stage II program can now take action to remove it from their state implementation plans. The final rule can be found in the May 16, 2012 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). The rule follows DEC’s issuance of an enforcement discretion directive in June 2011 announcing the Department’s intent to waive enforcement of Stage II requirements at certain gasoline stations in the wake of evidence showing that ORVR is in widespread use in New York. The memorandum can be found on DEC’s website at: [www.dec.ny.gov/regulations/74990.html](http://www.dec.ny.gov/regulations/74990.html).

Implications: The EPA rule and DEC enforcement discretion directive are potentially of interest to gasoline station owners in the New York City metropolitan region.

## WATER

**FEDERAL:** EPA adopted **effluent limitation guidelines and new source performance standards for the airport deicing category**. The Clean Water Act requires EPA to establish technology-based standards and guidelines for different categories of industrial, commercial and public wastewater dischargers. The new standards, which are set forth at 40 CFR Part 449, apply to primary commercial airports that conduct deicing operations and have more than 1,000 annual departures of scheduled commercial jet aircraft. Under the rule, covered airports must certify that they use airfield pavement deicers that do not contain urea; airports that continue to use urea-based compounds must meet numeric effluent limits for ammonia to be enforced in permits. However, EPA largely abandoned its proposal to require the collection of runoff from aircraft deicing operations at existing facilities, leaving it to the states or other regulating authority to decide what controls are appropriate. However, new airports must capture at least 60 percent of available aircraft deicing fluid and meet numerical discharge limits. The rule, which takes effect June 15, 2012, can be found in the May 16, 2012 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The rule affects airports with more than 1,000 annual commercial jet departures.

**FEDERAL:** EPA adopted **changes to analysis and sampling test procedures applicable under various Clean Water Act programs**. The rules, which are found primarily in 40 CFR Part 136, identify test procedures that must be used for the analysis of pollutants in applications and reports under the National Pollutant Discharge Elimination System (NPDES) permit program as well as state certifications required under Section 401 of the Clean Water Act. EPA develops its own analytical methods and relies on methods developed by voluntary standards development organizations. Approved methods are used to determine compliance with NPDES permits and other monitoring requirements. With this rulemaking, EPA added to the list of approved methods and updated versions of previously approved methods. EPA also clarified the process for obtaining approval of alternate procedures for nationwide or regional use and made other changes. The final rule can be found in the May 18, 2012 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The rule is potentially of interest to facilities with wastewater discharge permits.

## Other Recent Developments (Proposed)

## AIR

**NEW YORK STATE:** DEC **made available for comment its proposed annual monitoring network plan**, which describes New York's air monitoring network. As required by the Clean Air Act, DEC maintains a network of air monitors throughout the state to collect ambient air quality monitoring data for various pollutants, including ozone, particulate matter, and nitrogen oxides, as well as key meteorological data. These data are used by DEC to determine whether an area is achieving national ambient air quality standards; they are also used to determine the impact of a project under the Prevention of Significant Deterioration and other programs. The proposed plan includes an overview of New York's air quality monitoring program, followed by a detailed description of each of the



state's air monitoring locations. As part of the recent plan, DEC announced that it was suspending operation of four monitoring sites under its acid deposition monitoring program. Parts from the monitors at the closed sites will be used to maintain monitors at the remaining sites in the network. This step is necessary because the manufacturer is no longer producing replacement parts for the monitoring units. DEC also announced plans to discontinue and/or relocate monitors at other locations for various reasons, including eliminating redundant monitoring and monitoring at certain locations with no recent history of nonattainment. DEC is accepting comments on the proposed plan until **June 22, 2012**; it can be found on DEC's website at: [www.dec.ny.gov/chemical/33276.html](http://www.dec.ny.gov/chemical/33276.html).

Implications: The plan is primarily of interest to engineers performing air impact analyses.

## WATER

FEDERAL: In response to a series of appellate court decisions, EPA published a **notice announcing its intent to revise the Phase I stormwater regulations to specify that stormwater discharges from logging roads are not stormwater discharges "associated with industrial activity."** If implemented, the change will remove the obligation of an owner or operator of a logging road to seek coverage under the Multisector Stormwater General Permit or obtain an individual permit for stormwater discharges from logging roads. In conjunction with the notice, EPA also is evaluating whether further action is necessary to address stormwater discharges associated with logging roads and, if so, what type of action is appropriate. In particular, EPA is seeking comment on potential options for addressing stormwater discharges from forest roads and examples of successful best management practices-based state, tribal and voluntary certification programs. EPA is accepting comment on the notice until **June 22, 2012**; it can be found in the May 23, 2012 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The notice is primarily of interest to companies engaged in logging activities.

FEDERAL/NEW YORK STATE: DEC made available for comment its draft water quality certification for EPA's **revised draft general permit for discharges from vessels**. In December 2011, EPA published a revised draft general NPDES permit authorizing discharges incidental to the normal operation of non-military and non-recreational vessels 79 or more feet in length as well as a new permit targeted at smaller non-military and non-recreational vessels (sVGP). The revised draft VGP establishes effluent limits, best management practices, and inspection, monitoring, reporting and recordkeeping requirements to control discharges; for the first time, the VGP also contains numeric ballast water discharge limits. Under the new sVGP, vessel owners/operators must complete a sVGP permit authorization and record of inspection form and conduct and certify annual inspections. To implement the general permits, EPA must obtain a water quality certification (WQC) from DEC under Clean Water Act § 401. DEC's proposed WQC contains additional conditions that are intended to ensure that discharges from vessels subject to the VGP will not cause water quality problems. Those conditions include: (1) restrictions on where vessels can conduct ballast water exchange or flushing; (2) best management practices applicable to vessels that operate exclusively in the Great Lakes; (3) requirements to sample ballast water discharge at least annually for live organisms after a ballast water treatment system is installed; and (4) a prohibition against discharging bilge water. With respect to the sVGP, DEC determined that no additional conditions are required. DEC is accepting

comments on the draft WQC until **June 6, 2012**; information about the WQC can be found on DEC's website at: [www.dec.ny.gov/permits/72399.html](http://www.dec.ny.gov/permits/72399.html).

Implications: The vessel general permits and related WQC are primarily of interest to owners/operators of commercial vessels.

NEW YORK STATE: DEC and the New York City Department of Environmental Protection (DEP) are seeking comment on a **draft consent order and protocol designed to help manage turbidity and reservoir releases associated with operation of the Ashokan Reservoir**. The Ashokan Reservoir is a key component of New York City's drinking water supply. During its normal operation, the Ashokan Reservoir feeds into the Kensico Reservoir, which is the last receiving reservoir for the Catskill and Delaware system before the water enters aqueducts for distribution to New York City. For various reasons, the water in the Ashokan suffers from turbidity problems that were addressed in the past through the addition of chemicals to improve settling and by removing turbid water from the bottom of the Ashokan and discharging it via a bypass to the Lower Esopus Creek. The draft consent order requires DEP to implement various measures designed to better manage the turbidity problem, including: (1) requiring dredging to remove accumulated alum floc from the Kensico Reservoir; (2) implementing various structural measures designed to reduce the potential for turbidity; and (3) undertaking nonstructural measures, such as preparing a comprehensive Environmental Impact Statement to help identify a strategy for managing turbidity. The order also includes an Interim Ashokan Release Protocol that addresses when and how releases from the Ashokan Reservoir will be made so as to improve flood attenuation and ensure better water quality. DEC is accepting comments on the draft consent order until **July 2, 2012**; the order can be found on DEC's website at: [www.dec.ny.gov/lands/79771.html](http://www.dec.ny.gov/lands/79771.html).

Implications: The consent order is primarily of interest to communities in the vicinity of, and downstream from, the Ashokan Reservoir.

## OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: The Occupational Safety and Health Review Commission is seeking comment on **proposed changes to its Settlement Part program**. The program, which is codified at 29 CFR § 2200.120, is designed to encourage settlement of contested Occupational Safety and Health Act (OSHA) citations and reduce litigation costs. Under the program, contested OSHA citations with a total penalty of \$100,000 or more must undergo a settlement procedure before reaching a Review Commission administrative law judge. During the settlement procedure, a settlement judge oversees discovery proceedings, conducts conferences with the parties to narrow the issues, and attempts to settle the case. In an effort to improve the program, the Review Commission plans to survey recent participants to obtain feedback on the process. In addition, the Review Commission is seeking input from the general public on issues such as the role of OSHA staff, confidentiality, possible changes to the discovery rules, allowing use of the settlement program for complex cases that do not meet the dollar threshold, and allowing parties to opt out of the program and proceed directly to hearing. The Review Commission is accepting comments on the Settlement Part program until **June 25, 2012**; the notice can be found in the May 11, 2012 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The notice is potentially of interest to anyone who could be subject to large OSHA fines.



## Upcoming Deadlines

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

**June 6, 2012:** Deadline for submitting comments on DEC's draft vessel general permit water quality certifications. See DEC's website at [www.dec.ny.gov/permits/72399.html](http://www.dec.ny.gov/permits/72399.html) for details.

**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](http://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](http://www.gpo.gov/fdsys) for details.

**June 22, 2012:** Deadline for submitting comments on DEC's draft ambient air monitoring network plan. See DEC's website at [www.dec.ny.gov/chemical/33276.html](http://www.dec.ny.gov/chemical/33276.html) for details.

**June 22, 2012:** Deadline for submitting comments in response to EPA's notice seeking feedback on methods of addressing stormwater discharges from logging roads. See the May 23, 2012 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**June 25, 2012:** Deadline for submitting comments on EPA's proposed NSPS for CO<sub>2</sub> emissions from electric generating units (extended from June 12, 2012). See the April 13, 2012 Federal Register at [www.gpo.gov/fdsys](http://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](http://www.gpo.gov/fdsys) for details.

**June 25, 2012:** Deadline for submitting comments on Occupational Safety and Health Review Commission's Settlement Part program. See the May 11, 2012 Federal Register at [www.gpo.gov/fdsys](http://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](http://www.gpo.gov/fdsys) for details.

**July 2, 2012:** Deadline for submitting comments on DEC's Ashokan Reservoir Consent Order. See [www.dec.ny.gov/lands/79771.html](http://www.dec.ny.gov/lands/79771.html) for details.

**July 9, 2012:** Deadline for submitting comments on EPA's draft *Permitting Guidance for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels*. See the May 10, 2012 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.