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ENVIRONMENTAL BREAKFAST CLUB
REGULATORY SUMMARY

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Final Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
AIR			
FEDERAL **Residual Risk and Periodic Technology Review of Chromium Electroplating and Anodizing Standards** 40 CFR Part 63, subpart N 77 Fed. Reg. 58220 (Sept. 19, 2012)	EPA revised the **National Emission Standards for Hazardous Air Pollutants (NESHAP) for hard and decorative chromium electroplating and chromium anodizing sources in conjunction with its residual risk and periodic technology review.** Under Clean Air Act § 112, EPA must assess whether any residual risk remains after imposing technology-based NESHAPs and revise the standard as necessary; EPA also must conduct a periodic review of the underlying technology to confirm that it remains current. In October 2010, EPA announced the results of its residual risk and periodic technology review of the chromium electroplating NESHAP; the agency followed up with a supplemental proposal in February 2012. Major changes adopted by EPA following this review include: • Tightening the emission and surface tension limits for new and existing chromium electroplating and anodizing facilities. • Prohibiting the use of fume suppressants containing perfluorooctane sulfonic acid (PFOS) in electroplating and anodizing tanks. • Establishing housekeeping requirements to minimize emissions of chromium-laden dust, including: storage requirements for any substance that contains hexavalent chromium as a primary ingredient; controls for the dripping of bath solution resulting from dragout; splash guards to minimize overspray and return bath solution to the electroplating/anodizing tank; a requirement to clean up or contain all spills of substances containing hexavalent chromium; and various cleaning requirements, among others. • Requiring compliance with emission standards during startup and shutdown and establishing an affirmative defense for violations occurring during malfunctions. • Requiring electronic reporting of performance test reports to EPA. The rule can be found in the September 19, 2012 Federal Register at: www.gpo.gov/fdsys.	The rule is primarily of interest to facilities engaged in chromic acid anodizing, decorative chromium electroplating, and hard chromium electroplating. EPA estimates that there are approximately 650 hard chromium electroplating, 520 decorative chromium electroplating, and 170 chromium anodizing plants currently operating nationwide.	The final rule took effect September 19, 2012. Facilities must implement the housekeeping requirements by March 19, 2013. The compliance date for the revised emission and surface tension limits is September 19, 2014. Facilities must eliminate PFOS-based fume suppressants by September 21, 2015.

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WATER			
FEDERAL **Great Lakes Water Quality Agreement**	The United States and Canada recently signed an **amended Great Lakes Water Quality Agreement (GLWQA)** establishing a new framework for addressing joint water quality concerns affecting the Great Lakes. The GLWQA was first signed in 1972 and has been amended on several occasions since then, most recently in 1987. Of particular note, the recent agreement for the first time includes controls on phosphorus pollution to control the growth of algae. The agreement specifies interim phosphorus concentration and total load targets for individual parts of the Great Lakes system and requires each country to review the objectives and revise them as necessary to achieve the goals of the agreement. The GLWQA also commits the parties to reduce discharges of phosphorus from wastewater treatment plants to .5 milligrams per liter (mg/l) or 1.0 mg/l depending on the lake involved. In addition, phosphorus in detergents and household cleaners must be reduced to 0.5 percent by weight to the extent necessary to achieve the goals of the agreement. With respect to invasive species, the agreement requires the nations to develop species watch lists, establish new measures to prevent introduction of invasive species, and adopt restrictions on ballast water discharges. Other issues addressed by GLWQA include: addressing areas of concern (i.e., restoring beneficial uses that have become impaired due to local conditions); lakewide management; chemicals of mutual concern (i.e., reducing manmade releases of chemicals of mutual concern); discharges from vessels (including oil and hazardous substances); habitat degradation; and climate change. Information about the GLWQA can be found on EPA's website at: www.epa.gov/grtlakes/glwqa.	The Great Lakes basin covers all or part of 25 counties in New York, extending along Lake Erie and Ontario and the St. Lawrence Seaway from Chautauqua County in the southwest to Clinton County in the northeast. Implementation of the GLWQA will likely result in stricter controls on phosphorus and other nutrient discharges into the basin from both point and nonpoint sources. It will also likely result in the adoption of stricter controls on wastewater discharges associated with shipping to reduce the potential introduction of invasive species.	

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WATER			
NEW YORK STATE **SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity** GP-0-12-001	DEC revised the State Pollutant Discharge Elimination System (SPDES) **Multi-Sector General Permit (MSGP) for Stormwater Discharges Associated with Industrial Activity**, which expired September 30, 2012. The MSGP covers discharges of stormwater from facilities in certain industrial categories (i.e., sectors). Potentially regulated facilities must prepare a stormwater pollution prevention plan (SWPPP) and notify DEC that they intend to be covered by the MSGP. Assuming coverage is granted, the facility must implement the SWPPP and comply with the general and sector-specific conditions in the MSGP. Facilities can escape coverage under the MSGP if they can certify that all industrial materials and activities are protected from exposure to stormwater. Major changes to the MSGP include: • ***Inclusion of technology-based effluent limits*** consistent with EPA's MSGP. • ***Additional requirements for discharges to impaired waters***, including requiring dischargers to demonstrate that the pollutant causing the impairment is not present or not exposed to stormwater or certify that the SWPPP includes certain heightened requirements. • ***Additional monitoring.*** Facilities must conduct additional monitoring if benchmarks or numeric limits are exceeded to demonstrate that corrective actions have been effective. • ***Changes to best management practices (BMP) options.*** Where the owner/operator rejects certain BMPs the SWPPP must include an explanation of why they are not appropriate. • ***Lower benchmark monitoring cutoff concentrations*** to reflect benchmarks in EPA's 2008 MSGP. • ***Changes to forms***, including deleting forms from the permit (to facilitate future changes) and creating separate Notice of Intent, Notice of Termination and Notice of Modification forms in place of a single Notice of Intent and Termination form. DEC also reformatted the core permit and sector-specific sections to make them easier to read and understand. The MSGP and related materials can be found on DEC's website at: www.dec.ny.gov/chemical/9009.html.	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 it 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, applies if DEC specifically notifies the facility that coverage is needed.	The new general permit took effect October 1, 2012 and expires September 30, 2017. Permittees covered under the previous MSGP (GP-0-11-009) must amend their existing SWPPPs to conform to the new permit and submit a Notice of Intent form to DEC by December 30, 2012.

Other Recent Developments (Final)

AIR

FEDERAL: EPA completed its residual risk review of the **National Emission Standards for Hazardous Air Pollutants for the pulp and paper industry**, 40 CFR Part 63, subpart S, and concluded that the current standard protects public health with an adequate margin of safety and that no changes are necessary to address residual risks remaining after imposition of technology-based standards. With respect to the periodic technology review, EPA declined to finalize proposed stricter kraft condensate standards after concluding based on additional data that the costs and impacts associated with the expected pollution reduction were not reasonable. However, EPA made other changes, including: (1) requiring air emissions performance testing every five years for facilities complying with the standards for kraft, soda and semi-chemical pulping vent gases, sulfite pulping processes, and bleaching systems; (2) deleting the existing startup, shutdown and malfunction exemption and establishing an affirmative defense for violations occurring during malfunctions; (3) requiring submission of electronic copies of performance test reports to EPA; and (4) adding four additional test methods for measuring methanol emissions from pulp and paper processes. The final rule can be found in the September 11, 2012 Federal Register at: www.gpo.gov/fdsys.

Implications: The revisions to subpart S are primarily of interest to pulp and paper mills. EPA estimates that there are approximately 170 major source pulp and paper mills covered by subpart S.

FEDERAL: In conjunction with revisions to the chromium electroplating NESHAP discussed above, EPA also **revised the NESHAP for steel pickling-HCl process facilities and hydrochloric acid regeneration plants**, set forth at 40 CFR Part 63, subpart CCC, following the residual risk/periodic technology review process. Major changes include: (1) deleting language that allowed existing acid regeneration facilities to apply for site-specific chlorine concentration limits; (2) establishing an affirmative defense for violations caused by malfunctions; and (3) requiring electronic reporting of performance test reports to EPA. EPA concluded that the post-amendment steel pickling NESHAP provides an ample margin of safety to protect public health; EPA also concluded that there have been no advances in feasible practices, processes and control technologies for this source category. The final rule can be found in the September 19, 2012 Federal Register at: www.gpo.gov/fdsys.

Implications: The revisions are primarily of interest to iron and steel mills, ferroalloys manufacturing operations, and steel products manufacturing plants.

FEDERAL: Following a mandatory periodic review, EPA **revised the New Source Performance Standards (NSPS) for petroleum refineries**, set forth at 40 CFR Part 60, subparts J and Ja. The revised standards regulate process heaters and flares at refineries. Major changes include: (1) establishing new concentration-based and heating value-based nitrogen oxide (NOx) emission limits for process heaters measured on a 30-day rolling average applicable during periods of normal operation; (2) allowing alternative case-specific

NOx limits applicable during certain conditions such as turndown; (3) clarifying the difference between the requirements for flares and fuel gas combustion devices; (4) identifying flare connections that are not considered modifications; (5) establishing new, stricter requirements to reduce sulfur dioxide emissions from flares; and (6) revising key definitions. EPA revised the standards in 2008 but stayed implementation in the wake of several petitions for reconsideration. With this rulemaking, EPA lifted the stay and finalized changes made in response to the petitions. The final rule takes effect November 13, 2012; it can be found in the September 12, 2012 Federal Register at: www.gpo.gov/fdsys.

Implications: The rule is primarily of interest to owners/operators of petroleum refineries.

WATER

FEDERAL/NEW YORK STATE: DEC issued its **final water quality certification (WQC) 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 in New York, EPA must obtain a WQC from DEC under Clean Water Act § 401. DEC's WQC contains additional conditions 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. The WQC and related documents can be found on DEC's website at: 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.

REMEDIATION

FEDERAL: EPA issued the fifth edition of its ***Brownfields Road Map to Understanding Options for Site Investigation and Cleanup***, which provides an outline of the steps involved in brownfield remediation and access to information about available technologies and resources. The road map document contains an overview of the brownfield process, followed by more detailed information on each step in that process – site assessment, site investigation, assessment and selection of cleanup option(s), and design and implementation of cleanup. It includes a series of "spotlights," which focus on key issues, processes and initiatives such as connecting cleanup and reuse, conducting all appropriate inquiries investigations, and data quality. The road map also includes several online appendices,

including a guide to contaminants and technologies containing information about the remedial process organized by site type, investigation technology, treatment technology, and contaminant. The road map website also provides online access to technical support contacts and publications and resources. The road map document and online resources can be accessed at: www.brownfieldstsc.org/roadmap.

Implications: The road map is potentially of interest to anyone engaged in brownfield investigation/remediation activities.

HYDRAULIC FRACTURING

FEDERAL/NEW YORK STATE: A federal district court **dismissed an action brought by the New York Attorney General (AG) premised on the purported failure of the Delaware River Basin Commission (DRBC) to comply with the National Environmental Policy Act (NEPA) when drafting regulations addressing hydraulic fracturing in the Delaware River Basin**, which comprises portions of New York, New Jersey and Pennsylvania. In 2010-2011, the DRBC proposed regulations addressing natural gas extraction in the DRB and issued a moratorium against drilling until it finalized the rules. The AG's office submitted comments on the draft regulations requesting that the DRBC perform a NEPA analysis. When this request was denied, the AG and others sued on various grounds. In *New York v. U.S. Army Corps of Engineers*, 2012 WL 4336701 (E.D. N.Y. 2012), the U.S. District Court for the Eastern District of New York dismissed the action for lack of standing after concluding that the plaintiffs could not demonstrate an injury in fact given that the regulations at issue were proposed not final. The court went on to declare that the plaintiffs' action was not "ripe" (i.e., fit for judicial review) given that the "harms that Plaintiffs ultimately are concerned about are speculative, and rely on a chain of inferences that may never come to pass" and that delaying the action would not impose any hardship on the parties.

ZONING AND LAND USE

NEW YORK STATE: In a pair of recent decisions, the New York Appellate Division, Second Department, **considered whether proximity gives a petitioner standing to challenge a project under the State Environmental Quality Review Act (SEQRA)** and other laws. In *Shapiro v. Town of Ramapo*, 98 A.D.3d 675 (2nd Dept. 2012) and *Youngewirthe v. Town of Ramapo Town Board*, 98 A.D.3d 678 (2nd Dept. 2012), a developer applied to the Ramapo Town Board for amendments to the Town's zoning map and comprehensive plan to allow development of multifamily residential units on property zoned single family. The petitioners in the two actions, who lived across the street from the parcel, sued alleging numerous problems, including the Town Board's alleged failure to comply with SEQRA. On appeal, the court modified a pair of lower court decisions finding that the petitioners lacked standing after concluding that the petitioners did not need to show actual injury or special damages since they lived in close proximity to the portion of the site that was the subject of the challenged determinations. The court went on to find that the trial court erred in reaching the merits of petitioners' SEQRA claims prior to service of Respondents' answers and the filing of the full administrative record. The court also considered various other claims with mixed results.

Other Recent Developments (Proposed)

AIR

NEW YORK STATE: DEC **made available for comment additional revisions to its 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. The 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 monitor locations. The recent notice identifies last-minute network changes that were not included in the proposed plan made available for comment in May 2012. DEC is accepting comments on the revised plan until **October 12, 2012**; it can be found on DEC's website at: www.dec.ny.gov/chemical/33276.html.

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

OTHER

NEW YORK STATE: DEC is **accepting applications for its New York Environmental Leaders (NYEL) program**, which seeks to recognize and provide incentives to organizations that demonstrate use of sustainable business practices or pollution prevention practices that exceed environmental compliance. Companies accepted into the NYEL program are considered a priority for DEC assistance, and are provided access to a specially designated DEC contact to facilitate communication between DEC and the NYEL member; they are also eligible to use the NYEL logo. The program consists of two tiers: (1) a leadership tier (open to organizations with a track record of environmental leadership); and (2) an entry tier. Applications for entry into the program this year must be submitted to DEC by **October 31, 2012**. NYEL information and application forms can be found on DEC's website at: www.dec.ny.gov/chemical/939.html.

Implications: This announcement is potentially of interest to companies seeking state recognition for their environmental compliance efforts.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

October 11, 2012: Deadline for submitting comments on the renewable fuel standards waiver requests submitted to EPA (extended from September 26, 2012). See the August 30, 2012 Federal Register at www.gpo.gov/fdsys for details.

October 12, 2012: Deadline for submitting comments on DEC's proposed ambient air monitoring network plan. See DEC's website at www.dec.ny.gov/chemical/33276.html for details.

October 15, 2012: Deadline for submitting comments on PHMSA's proposed revisions to hazardous material regulations. See the August 15, 2012 Federal Register at www.gpo.gov/fdsys for details.

October 22, 2012: Deadline for submitting comments on DEC's draft Short EAF Workbook. See www.nyseaf.net for details.

October 29, 2012: Deadline for submitting comments on EPA's proposed revisions to the stationary combustion turbine NSPS. See the August 29, 2012 Federal Register at www.gpo.gov/fdsys for details.

October 31, 2012: Deadline for submitting application to participate in New York Environmental Leaders program. See DEC's website at www.dec.ny.gov/chemical/939.html for details.

November 5, 2012: Deadline for submitting comments on EPA's proposed revisions to the TSCA PCB manifest regulations. See the September 6, 2012 Federal Register at www.gpo.gov/fdsys for details.