

Young / Sommer LLC

ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

March 1, 2013

Prepared by:
Elizabeth Morss
Young/Sommer LLC
5 Palisades Drive
Albany, NY 12205
(518) 438-9907, ext. 232
emorss@youngsommer.com
<http://www.youngsommer.com>

Final Statutes, Regulations, Guidance and Cases

Citation	Summary	Implications	Schedule/Notes
<p>AIR</p> <p>NEW YORK STATE Air Permitting Regulations 6 NYCRR Part 201</p>	<p>DEC adopted major changes to New York’s air permitting regulations, which have not been significantly revised since 1996 when DEC implemented the Clean Air Act’s Title V permitting requirements. Key changes to 6 NYCRR Part 201 include:</p> <ul style="list-style-type: none"> • Requiring facilities operating under pre-1996 certificates to operate to submit a state facility permit or registration application. • Revising the applicability provisions relating to registrations and state facility permits, including deleting language requiring all facilities with new emission sources that are subject to New Source Performance Standards and/or emit any hazardous air pollutants to obtain a state facility permit. • Revising the list of exempt and trivial activities, including those relating to combustion sources, gasoline dispensing sites, landfill gas ventilating systems, ventilating and exhaust systems for laboratory operations, and emergency relief vents, among others. • Extending the exemption for “temporary” emission sources to all facilities (not just those subject to Title V permits) and revising the rules governing operation of such sources. • Requiring more information from facility owners/operators on permit application forms. • Revising the cap-by-rule provisions to eliminate outdated fuel usage thresholds, relocate the cap-by-rule requirements to subpart 201-4 (registration), and clarify the cap-by-rule language. • Clarifying the rules governing federally enforceable emission caps in subpart 201-7. • Establishing a 10-year term for registrations and state facility permits. • Requiring facilities that emit one or more of 63 listed persistent, bioaccumulative and toxic compounds from non-exempt emission sources other than combustion installations to register or obtain a state facility permit depending on whether emissions exceed thresholds contained in the rule. • Requiring facilities to commence construction within 18 months of receiving a permit to construct from DEC. <p>The revisions can be found on DEC’s website at: www.dec.ny.gov/regulations/propregulations.html.</p>	<p>The revisions are potentially of interest to any facility required to obtain an air registration or permit from DEC. As previously noted, DEC has not significantly revised the Part 201 regulations since 1996. Over time, DEC identified various provisions that required clarification or correction. Moreover, certain developments under the Clean Air Act expanded the scope of the air permitting program in ways not anticipated by DEC. With the recent rulemaking, DEC hoped to simplify/clarify the air permitting rules and eliminate outdated provisions.</p> <p>DEC’s new rule requiring facilities that emit listed PBTs above a specified threshold to obtain a state facility permit will increase the permitting burden on some facilities. According to DEC, the change is necessary to ensure that facilities emitting potentially hazardous compounds are identified, monitored and potentially controlled.</p>	<p>The rule took effect February 22, 2013 (30 days after filing with the Department of State).</p>

Citation	Summary	Implications	Schedule/Notes
AIR			
<p>FEDERAL NESHAP for Major Sources: Industrial, Commercial and Institutional Boilers and Process Heaters 40 CFR Part 63, subpart DDDDD 78 Fed. Reg. 7138 (Jan. 31, 2013)</p>	<p>EPA revised the maximum achievable control technology (MACT) standards for major sources in the industrial, commercial and institutional boiler and process heater category under the Clean Air Act (CAA) § 112 National Emission Standards for Hazardous Air Pollutants (NESHAP) program following a contentious reconsideration process. A federal court vacated the original subpart DDDDD rule when it vacated the rule for commercial and industrial solid waste incinerators discussed below. EPA revised the rule in March 2011 in response to the court’s decision and proposed additional changes 10 months later. The recently revised rule includes the following key components:</p> <ul style="list-style-type: none"> • Mercury, PM, hydrogen chloride (HCl), and carbon monoxide (CO) emission limits on numerous subcategories of larger/more polluting boilers/process heaters. Following reconsideration, EPA expanded the number of subcategories to include light and heavy industrial liquids and fluidized coal bed units. EPA also set new emission limits for various pollutants, replaced numeric limits with work practice standards for dioxin, and allowed units to comply with an alternative total selected metals emission limit in place of the PM limit. • Work practice standards instead of emission limits for units burning clean gases, certain smaller units and limited use units. In particular, owners must conduct a tuneup every one, two or five years depending on the type of unit. In addition, a one-time energy assessment must be performed on existing boilers and process heaters other than limited use units to identify possible efficiency improvements. • Performance testing, monitoring, reporting and recordkeeping requirements. In response to public comment, EPA added alternative monitoring approaches for demonstrating continuous compliance with the PM and HCl limits. <p>The revised subpart DDDDD boiler MACT rules can be found in the January 31, 2013 Federal Register at: www.gpo.gov/fdsys.</p>	<p>EPA estimates that there are approximately 14,000 boilers and process heaters at major sources, approximately 12% of which are required to comply with numeric emission limits under the subpart DDDDD rule. To date, these sources generally have not been required to comply with MACT because of the delays caused by the court decision vacating the original standard. The rule will affect all boilers and process heaters at major sources, although smaller and less polluting boilers are subject to tune-up requirements rather than emission limits.</p>	<p>The amendments to the rule take effect April 1, 2013.</p> <p>Existing sources must comply with the revised standards by January 31, 2016, with the possibility of a one-year extension. New sources must comply by January 31, 2013 or upon startup, whichever is later. A new source is one that commenced construction or reconstruction on or after June 4, 2010.</p>

Citation	Summary	Implications	Schedule/Notes
AIR			
<p>FEDERAL Area Source NESHAP for Industrial, Commercial and Institutional Boilers 40 CFR Part 63, subpart JJJJJJ 78 Fed. Reg. 7488 (Feb. 1, 2013)</p>	<p>EPA revised the area (i.e., minor) source standards for industrial, commercial and institutional boilers under the CAA § 112 NESHAP program following a controversial reconsideration process. The standards, set forth at 40 CFR Part 63, subpart JJJJJJ, apply to coal, biomass and oil-fired boilers located at area sources. Natural gas boilers, which comprise the vast majority of area source boilers, are exempt. Boilers are regulated under the revised standards as follows:</p> <ul style="list-style-type: none"> • New larger (> 10 mmBtu/hour heat input) coal, biomass and oil-fired boilers and existing coal-fired boilers must meet emission limits for PM, mercury and/or CO depending on the type of boiler. In addition, these boilers are subject to operating limits and continuous monitoring requirements. EPA revised the regulations to exclude seasonably-operated and limited use boilers from the emission limits and allow oil-fired boilers to meet the PM limit by burning low sulfur fuel. • Smaller/cleaner new and existing boilers must comply with periodic tune-up requirements. Following the reconsideration process, EPA revised the tuneup schedule as follows: (1) seasonally operated, limited use, and small oil-fired units and units with oxygen trim systems – once every five years; (2) other boilers – once every two years. In addition, existing boilers must conduct an initial tuneup. Owners of existing large boilers must arrange for an energy assessment to identify cost-effective energy conservation measures. EPA also: (1) revised provisions for existing dual-fuel fired units that switch from gas to coal, biomass or oil to allow the units to remain existing sources; (2) clarified that temporary and residential boilers are not regulated; and (3) extended the initial compliance date for existing area source boilers subject to the tuneup requirement. <p>The regulations can be found in the February 1, 2013 Federal Register at: www.gpo.gov/fdsys.</p>	<p>EPA estimates that the area source rule covers approximately 183,000 existing boilers at 92,000 facilities. Less than 1% of the boilers regulated under the area source standards are subject to emission limits; the remainder must comply with work practice requirements only. Natural gas boilers are not covered by the subpart JJJJJJ standard.</p>	<p>The revised regulation took effect February 1, 2013.</p> <p>Existing sources must notify EPA that they are subject to the standard by January 20, 2014; they must complete initial tune-ups and comply with other requirements by March 21, 2014. New sources that began operation on or before May 20, 2011 were required to comply with the NESHAP by that date. For new sources that start up after that date, the compliance date is the date of startup. Note a new source is a source that began operation after June 4, 2010.</p>

Citation	Summary	Implications	Schedule/Notes
AIR			
<p>FEDERAL Standards and Emission Guidelines for Commercial and Industrial Solid Waste Incineration Units 40 CFR Part 60, subparts CCCC and DDDD 78 Fed. Reg. 9112 (Feb. 7, 2013)</p>	<p>EPA finalized additional revisions to the standards and emission guidelines for new and existing commercial and industrial solid waste incineration (CISWI) units under CAA § 129 following a contentious reconsideration process. In 2011, EPA revised the CISWI rules to address a court decision which held that EPA improperly defined solid waste, a mistake that resulted in the regulation of certain CISWIs under CAA § 112, rather than the more stringent CAA § 129. The revised CISWI standards apply to commercial and industrial solid waste incinerators, energy recovery units that combust solid waste, waste-burning kilns, and small remote incinerators. Consistent with the requirements of CAA § 129, the rules establish emission standards for PM, lead, cadmium, mercury, dioxins/furans, CO, nitrogen oxides, HCl, and sulfur dioxide. They also contain provisions relating to siting, operator training and qualification, performance testing, monitoring/inspection, reporting and recordkeeping. Following the reconsideration process, EPA revised the standards to:</p> <ul style="list-style-type: none"> • Change certain emission limits based on additional information received during the reconsideration period and establish separate emission standards coal and biomass energy recovery units. • Revise the monitoring requirements, including requiring continuous parameter monitoring systems instead of PM continuous emission monitoring systems for waste-burning kilns and large energy recovery units. • Clarify what units are considered CISWIs by, among other things, finalizing definitions for various exempt sources. • Extend the compliance date for CISWIs. <p>The revised CISWI regulations can be found in the February 7, 2013 Federal Register at: www.gpo.gov/fdsys.</p>	<p>EPA estimates that approximately 106 units are subject to the revised CISWI rules. EPA concluded that some sources will find it more cost-effective to use alternative disposal options than upgrade to meet the new emission limits.</p>	<p>The amendments to subpart DDDD (existing source emission guidelines) were effective February 7, 2013; the amendments to subpart CCCC (new, modified and reconstructed sources) are effective August 7, 2013.</p> <p>Existing sources must comply with the CISWI standards three years after EPA approves a state plan or by February 7, 2018, whichever is earlier.</p>

Citation	Summary	Implications	Schedule/Notes
AIR/SOLID WASTE			
<p>FEDERAL Identification of Non-Hazardous Secondary Materials as Solid Waste 40 CFR Part 241 78 Fed. Reg. 9112 (Feb. 7, 2013)</p>	<p>EPA revised the definition of non-hazardous solid waste used to identify whether non-hazardous secondary materials burned as fuels or used as ingredients in combustion units are solid waste. The rule was adopted in March 2011 in the wake of the court decision vacating the commercial and industrial solid waste incineration rule on the ground that EPA improperly defined CISWI to exclude units that burn solid waste and recover energy. It clarifies what materials are considered “solid waste” when burned and thus what units are regulated under CAA § 129 rather than CAA § 112.</p> <p>The February 2013 rule excludes the following categories of non-hazardous secondary materials from the definition of solid waste when used legitimately as a fuel or an ingredient in a combustion unit:</p> <ul style="list-style-type: none"> • Non-hazardous secondary materials that remain within the control of the generator and are used as fuel; • Non-hazardous secondary materials that are used as ingredients; • Discards that have undergone processing to produce fuel or ingredient products; and • The following specific waste streams: (1) non-discarded scrap tires managed under the oversight of established tire collection programs; (2) resinated wood; (3) coal refuse removed from legacy piles and processed in the same manner as currently generated coal refuse; and (4) dewatered pulp and paper sludges (provided certain criteria are met). <p>Upon reconsideration, EPA made the following changes to the rule for identifying non-hazardous secondary materials that are excluded from regulation as solid waste when burned: (1) expanded the definition of clean cellulosic biomass (which is considered a traditional fuel when burned and so is not considered a solid waste); (2) streamlined the process of petitioning EPA for a non-waste determination to accommodate petitions that apply to multiple combustors; (3) added a process for petitioning EPA for a rulemaking to categorically list a particular type of non-hazardous secondary material as a non-waste; and (4) expanded the list of materials that are not considered solid waste when burned to include additional categories of scrap tires as well as coal refuse and pulp and paper sludges.</p> <p>The revised rule can be found in the February 7, 2013 Federal Register at: www.gpo.gov/fdsys.</p>	<p>The rule provides a basis for determining whether facilities that burn secondary materials as fuels or ingredients are regulated as boilers under CAA § 112 or CISWIs under CAA § 129.</p>	<p>The amendments to the rule take effect April 8, 2013.</p>

Citation	Summary	Implications	Schedule/Notes
CLIMATE CHANGE			
<p>NEW YORK STATE Revisions to RGGI Model Rule 6 NYCRR Part 242</p>	<p>The states participating in the Regional Greenhouse Gas Initiative (RGGI) revised the model rule developed to implement the RGGI program. The RGGI states established a multi-state carbon dioxide (CO₂) cap-and-trade program for power plants in the Northeast. With the close of the first control period at the end of 2011 the nine RGGI states reviewed the program and made the following changes:</p> <ul style="list-style-type: none"> • Emission cap. The RGGI states reduced the 2014 regional CO₂ budget from 165 million to 91 million tons, with a decline of 2.5% annually from 2015 to 2020. Participants will be allowed to use a portion of allowances banked from previous auctions during the 2014 to 2020 period. However, unsold 2012 and 2013 allowances will not be reoffered for sale. • Cost containment reserve (CCR). For the first time, the RGGI states established a CCR – a fixed additional supply of allowances that is available for sale if allowance prices exceed specified thresholds. The CCR is to intended to stabilize prices and replaces a provision that extends the control period to four years if prices get too high. • Compliance period. The states agreed to retain the existing three-year control period, with adjustments. Currently, RGGI participants must provide allowances equal to emissions at the end of a three-year control period unless several triggering events occur. The revised model rule requires participants to hold allowances equal to at least 50% of their emissions for each of the first two years of the compliance period in addition to showing full compliance at the end of three years. • Offsets. The states added a new offset category known as “sequestration of carbon due to reforestation, improved forest management or avoided conversion” that states may adopt in lieu of the existing afforestation category and made other changes to the offset rules. <p>Information about the new RGGI model rule can be found at: www.rggi.org.</p>	<p>The RGGI program applies only to power plants. Although the sale of CO₂ 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. The low GHG emission levels are due to the weak economy and the decision by many utilities to switch from petroleum and coal to natural gas, among other factors. The model rule reduces the CO₂ cap to current emissions levels.</p>	<p>DEC must revise 6 NYCRR Part 242 to incorporate the changes contained in the RGGI model rule. The revisions must be completed in time for the requirements to take effect January 1, 2014.</p>

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
AIR			
<p>FEDERAL SIP Call to Amend Provisions Relating to Excess Emissions During Startup, Shutdown and Malfunction Events 40 CFR Part 52 78 Fed. Reg. 12460 (Feb. 22, 2013)</p>	<p>EPA proposed changes to its policy governing excess emissions during startup, shutdown and malfunction (SSM) events, together with a notice requiring 36 states to revise their state implementation plans (SIP) to eliminate inconsistent SSM provisions (i.e., a SIP call). Many states have adopted provisions exempting excess emissions during SSM events from regulation or giving the state unlimited discretion to excuse SSM-related excess emissions. These provisions, many of which were adopted decades ago, conflict with EPA’s current SSM policy; also, the policy itself has been criticized for being inconsistent with the CAA. The Sierra Club petitioned EPA to revise aspects of its SSM policy and compel states with impermissible SSM provisions to make necessary changes. In response to that petition, EPA made the following determinations:</p> <ul style="list-style-type: none"> • EPA rejected petitioner’s argument that all affirmative defenses from monetary penalties for SSM events are barred by the CAA. Instead, EPA concluded that excess emissions during malfunctions are eligible for an affirmative defense, while those occurring during startup and shutdown are not because malfunctions are unplanned events that are not within the source’s control. EPA proposed to revise its existing SSM policy to reflect this distinction. • EPA granted most of petitioner’s request for modifications of specific state provisions exempting excess emissions during SSM events. The petitioner identified provisions in SIPs in 39 states that it considered inconsistent with the CAA. Ultimately, EPA issued SIP calls for 36 states. • EPA rejected petitioner’s contention that it should not rely on interpretive letters from states to resolve ambiguities in state regulations. <p>The proposed rule can be found in the February 22, 2013 Federal Register at: www.gpo.gov/fdsys.</p>	<p>New York is not among the 36 states required to revise its SSM provisions under the proposed SIP call. However, the SIP call reflects a broader concern about SSM emissions that may influence DEC’s approach to SSM-related excess emissions.</p> <p>The 36 states subject to the SIP call must revise their SIPs within 18 months of issuance of the final rule. If the state fails to submit the necessary revisions or if EPA disapproves them, EPA must impose a federal implementation plan within 24 months of the finding.</p>	<p>EPA is accepting comments on the proposed SIP call until March 25, 2013.</p> <p>In conjunction with the SIP call, EPA also is accepting comment on a memorandum summarizing the legal and administrative context of the proposed action.</p>

Citation	Summary	Implications	Schedule/Notes
ENFORCEMENT			
<p>NEW YORK STATE Environmental Audit Incentive Policy</p>	<p>DEC made available for comment a draft policy document entitled <i>Environmental Audit Incentive Policy</i>, which is designed to encourage regulated entities to audit their operations by reducing or waiving penalties for violations that are discovered and disclosed voluntarily. The policy is available to any regulated entity except those that have received an environmental conservation appearance ticket, notice of hearing and complaint, or administrative or judicial order in the past 5 years and were uncooperative in remedying past violations. However, the types of violations that are eligible for the policy are limited. Among other things, the policy excludes violations of laws subject to enforcement actions within the past 5 years, alleged criminal conduct, violations discovered during DEC inspections, and violations required to be self-reported. The regulated entity must disclose the violation “expeditiously,” consistent with any applicable time frame established by law; if there is no time frame specified, the violation must be disclosed within 30 days of discovery unless DEC establishes an alternate timeframe in an environmental audit agreement. Violations typically must be corrected no later than 60 days after disclosure to DEC. DEC will waive gravity-based penalties for companies that self-disclose under the policy and may waive other penalties if the company implements environmental audits or environmental management systems during the ordinary course of business or pursuant to an environmental audit agreement. Companies receiving penalty mitigation must identify measures to assure future compliance and state in writing that those measures will be implemented and maintained. The policy also includes other incentives to encourage companies to enter into environmental audit agreements.</p> <p>The draft policy can be found on DEC’s website at: www.dec.ny.gov/regulations/2374.html.</p>	<p>The policy represents an attempt by DEC to encourage voluntary environmental compliance by granting penalty waivers to regulated entities that identify noncompliance, self-report the violations to DEC and take steps to correct the problem and prevent future noncompliance. It also establishes other incentives to encourage companies to enter into agreements with DEC that commit the company to implementing compliance audits and/or using environmental management systems or pollution prevention.</p>	<p>DEC is accepting comments on the draft policy document until April 22, 2013.</p>

Citation	Summary	Implications	Schedule/Notes
REMEDIATION			
<p>NEW YORK STATE Screening and Assessment of Contaminated Sediment</p>	<p>DEC's Division of Fish, Wildlife and Marine Resources issued draft guidance entitled <i>Screening and Assessment of Contaminated Sediment</i> for comment. The document provides information and guidance to DEC staff on screening, evaluating and assessing contaminated sediment to determine whether it is toxic or potentially poses a risk to aquatic life. The guidance contains three sets of numeric thresholds for specific contaminants commonly found in sediment – Class A (contaminants below Class A thresholds present little or no risk to aquatic life); Class C (contaminants above Class C thresholds present a significant risk to aquatic life) and Class B (concentration of contaminant lies between Class A and C thresholds). Class B sediments are considered moderately contaminated and require additional testing and/or evaluation to determine the magnitude and extent of, or potential for, aquatic life toxicity. The guidance outlines the procedures for classifying sediment, addressing: (1) the definition of sediment (composition, size, origins, etc.); (2) the technical basis for establishing sediment guidance values (SGVs), i.e., the contaminant-specific thresholds for distinguishing among low, moderate, and high toxicity sediments; (3) contaminant mixtures (addressing sediments contaminated by more than one chemical, including special rules for mixtures of polycyclic aromatic hydrocarbons and metals); (4) bioaccumulation-based SGVs; (5) site-specific SGVs (to be developed when evidence suggests that SGVs derived from national data sets do not accurately reflect possible impacts at a particular site); (6) sediment toxicity testing; and (7) the decisionmaking process (screening and classifying sediment samples and additional studies based on results of the initial screening).</p> <p>The draft guidance can be found on DEC's website at: www.dec.ny.gov/docs/fish_marine_pdf/contamsedimentrev.pdf.</p>	<p>The guidance is primarily of interest to individuals involved in evaluating and potentially remediating sites with contaminated sediment. The guidance establishes a framework for classifying sediment based on toxicity and contains threshold levels for distinguishing among low, moderate and highly contaminated sediment. The guidance applies primarily to sediments that comprise the substrate of water bodies up to the mean high water line as well as permanently inundated wetlands that border water bodies. The guidelines may not be applicable to wetlands that are only occasionally submerged or are more soil-like in composition. The document does not discuss site remediation, mitigation or disposal; in addition, it is not to be used to characterize the suitability of dredged sediment for upland placement or disposal.</p>	<p>DEC is accepting comments on the draft guidance until April 12, 2013.</p>

Other Recent Developments (Final)

AIR

FEDERAL: EPA revised key aspects of its controversial NESHAP and New Source Performance Standards (NSPS) for Portland cement plants, which were amended in 2010. Among other things, EPA changed the PM emission limit for existing kilns from 0.04 pounds per ton of clinker measured using continuous emission monitoring systems (CEMS) to 0.07 pounds per ton of clinker based on manual stack tests conducted once every three years plus continuous parametric monitoring. According to EPA, the change is necessary because the CEMS may not meet an important performance specification. In setting the new PM standard, EPA excluded data obtained from cement kilns that burn nonhazardous waste consistent with the court's opinion in *Portland Cement Association v. EPA*, which criticized EPA for including emissions from these units when setting the NESHAP. As part of the rulemaking, EPA also: (1) increased the emission limits for organic air toxics, an alternative to total hydrocarbons; (2) allowed work practices to control fugitive emissions from open clinker piles; and (3) replaced numeric limits during startup and shutdown with work practice standards. Finally, EPA extended the NESHAP compliance date for existing cement kilns two years to September 9, 2015 after concluding that the additional time is needed to allow industry to change its control strategies based on the new PM limits. The compliance deadline is February 12, 2014 for the open clinker storage pile standards. The final rule can be found in the February 12, 2013 Federal Register at: www.gpo.gov/fdsys.

Implications: The rule is primarily of interest to owners/operators of cement plants.

CLIMATE CHANGE

FEDERAL: EPA released the second round of **data received under its mandatory greenhouse gas (GHG) reporting program**. Under 40 CFR Part 98, facilities in certain industrial categories that directly emit more than 25,000 metric tons of carbon dioxide equivalent must report their GHG emissions to EPA annually following source category-specific protocols; suppliers of certain fossil fuels and industrial gases also must report emissions associated with their products. Among stationary sources, the data released by EPA show that power plants were by far the largest GHG producers in 2011, accounting for 67% of GHG emissions among direct emitters required to report under the program; petroleum and natural gas systems and petroleum refineries and chemical plants were second and third. Twelve source categories, including petroleum and natural gas systems, reported for the first time in 2012. EPA has developed an easy-to-use online data publication tool known as "FLIGHT" that allows users to view GHG data in a variety of ways, including by location, facility, industrial sector, or state. The data can be found on EPA's website at: www.epa.gov/ghgreporting/ghgdata/index.html.

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

REMEDIATION

FEDERAL: EPA made available a **technical report addressing petroleum vapor intrusion**. The report, entitled *Evaluation of Empirical Data to Support Soil Vapor Intrusion Screening Criteria for Petroleum Hydrocarbon Compounds*, presents an evaluation of empirical data and select modeling studies of the behavior of petroleum hydrocarbon (PHC) vapors in subsurface soils and how these vapors can affect subsurface-to-indoor air vapor intrusion. The report concludes that the potential for vapor intrusion into buildings depends on facility type (which influences the size of the release), source type (dissolved versus light nonaqueous phase liquid), and the vertical distance between the source of the release and the receptor (i.e., building foundation). According to the report, PHC vapors biodegrade more quickly than chlorinated hydrocarbons in the presence of oxygen; as a result, the screening methods for assessing vapor intrusion for chlorinated hydrocarbons are overly conservative, suggesting a different method is needed for PHC. The technical document comes as EPA prepares to release broader vapor intrusion guidance. The technical document can be found on EPA's website at: www.epa.gov/oust/cat/pvi/PVI_Database_Report.pdf.

Implications: The report is potentially of interest to individuals involved in remediating petroleum contaminated sites.

WATER

FEDERAL: EPA **revised its national primary drinking water standard for total coliform** to incorporate improvements recommended by a federal advisory committee. The current regulation requires all public water systems to test for total coliform, despite the fact that only certain coliform bacteria are dangerous. If more than five percent of the samples contain coliform, the system operator must report this violation to the state and the public. With this rulemaking, EPA replaced the total coliform standard with a standard of zero for *E. coli*, a more specific indicator of contamination. In addition, the operator must continue to test for total coliform. A system that exceeds a specified frequency of total coliform occurrence or violates the *E. coli* standard must conduct an assessment to determine if any sanitary defects exist (e.g., a water main break or an opening in a storage tank) and correct the defect. The type of assessment required depends on the severity and frequency of contamination. EPA also adopted major changes to its coliform monitoring and public notification requirements. In particular, EPA replaced the requirement for public notification based on total coliform with one requiring public notification when an *E. coli* exceedance occurs or when the public water system fails to conduct required assessments or corrective actions. The final rule takes effect April 15, 2013. Public water systems must comply with the requirements of the revised total coliform rule beginning April 1, 2016. The rule can be found in the February 13, 2013 Federal Register at: www.gpo.gov/fdsys.

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

OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: The Occupational Safety and Health Administration (OSHA) issued a **fact sheet entitled *Working Safely with Nanomaterials*** that provides basic information to workers and employers on the hazards of these materials and possible measures to control exposure. Nanomaterials are manufactured from nanoscale structures such as carbon nanotubes and filaments or from nanoparticles such as titanium dioxide or cadmium selenide, which are near-atomic in scale. Certain nanoparticles may cause lung inflammation and/or are considered a potential occupational carcinogen; also, nanomaterials may act as chemical catalysts and/or are combustible, creating a risk of fire or explosion. The fact sheet provides information about occupational exposure limits, assessing worker exposure to nanomaterials, and methods available to reduce worker exposure (engineering and administrative controls, personal protective equipment, and medical screening and surveillance). The fact sheet makes clear that much is still unknown about nanomaterials and that information about potential health effects, exposure limits and best practices for ensuring worker safety are still being developed. The fact sheet can be found on the OSHA website at: www.osha.gov/Publications/OSHA_FS-3634.pdf.

Implications: The fact sheet is potentially of interest to anyone working with nanomaterials.

Other Recent Developments (Proposed)

AIR

FEDERAL: EPA proposed to set **the renewable fuel standards (RFS) that will apply to all gasoline and diesel transportation fuel produced or imported during calendar year 2013**. Under the RFS program, gasoline and diesel producers and importers must use an increasing percentage of four types of renewable fuel: cellulosic biofuel, biomass-based diesel, advanced biofuel, and renewable fuel. To implement the RFS, EPA established a credit program under which every gallon of renewable fuel is assigned a unique number which is transferred along with the fuel. Refiners, blenders and importers subject to the RFS program must have sufficient RFS credits to meet their obligations under the program. With the current rulemaking, EPA proposed the 2013 volume percentage standards for the four types of fuel subject to the RFS program. As required by the CAA, EPA set the cellulosic biofuel standard based on the volume projected to be available during the upcoming year. However, EPA declined to lower the advanced biofuel and renewable fuel standards to address the gap between the projected and statutory cellulosic biofuel levels after concluding that there are sufficient quantities of other advanced biofuels available; the agency is specifically accepting comment on this decision because of uncertainty about the supply of advanced biofuel. EPA is accepting comment on the proposed rule until **March 25, 2013**; it can be found in the February 7, 2013 Federal Register at: www.gpo.gov/fdsys.

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

FEDERAL: In another RFS-related development, **EPA proposed revisions to the RFS program designed to minimize the potential for fraud and improve liquidity** in the renewable fuel credit market. Under the RFS program, each gallon of eligible

renewable fuel is assigned a renewable identification number (RIN). Transportation fuel suppliers can meet their renewable fuel volume obligations either by acquiring the required volumes of renewable fuels together with their RINs or purchasing just the RINs without the associated fuel. In the past several years, several companies have offered RINs for sale without actually producing any renewable fuel, leading to charges of criminal fraud and lawsuits for breach of contract. In addition, EPA signed a consent order with various companies that purchased and used the fraudulent credits to resolve their liability for failing to meet their RFS obligations. These problems have led to significant instability in the RFS market. To address the fraud problem, EPA proposed two voluntary third party quality assurance program options for RINs in addition to the current “buyer beware” approach. The proposed program calls for audits of renewable fuel production by independent third parties using quality assurance plans (QAPs) to assure that RINs are properly generated. The rulemaking addresses key elements of the audit program including: minimum requirements for QAPs; qualifications for independent auditors; replacement instruments or other means to assure that invalid RINs are replaced; requirements for audits of renewable fuel facilities; and conditions under which a regulated party could assert an affirmative defense to liability for transferring/using an invalid RIN. Companies that implement the stricter of the two audit options are entitled to replacement RINs from the third party auditor in the event the original RINs are found to be invalid. EPA is accepting comment on the proposed rule until **April 18, 2013**; it can be found in the February 21, 2013 Federal Register at: www.gpo.gov/fdsys.

Implications: The RFS quality assurance proposal is primarily of interest to renewable fuel and transportation fuel producers and fuel dealers.

NEW YORK STATE: DEC proposed to **repeal its indirect source regulations**, set forth at 6 NYCRR Part 203. These regulations, which only apply south of 60th Street in Manhattan, require a permit prior to constructing or modifying any facility, structure or installation which generates traffic that contributes to air pollution. According to DEC, since promulgation of Part 203, other rules have been adopted that regulate air pollution from indirect sources, most notably the transportation conformity rules set forth at 6 NYCRR Part 240. In addition, non-highway, non-federal projects such as private office buildings or parking garages are subject to review under the State Environmental Quality Review Act. These regulatory developments have rendered Part 203 unnecessary. DEC is accepting comments on the proposed repeal until **April 2, 2013**; a public hearing on the rulemaking is scheduled for March 26, 2013 at DEC’s office in Long Island City. The proposed rule can be found on DEC’s website at: www.dec.ny.gov/regulations/propregulations.html.

Implications: The rule proposed to be repealed affects only development activities south of 60th Street in Manhattan.

PESTICIDES

NEW YORK STATE: DEC is accepting comment on its *Draft Long Island Pesticide Pollution Prevention Strategy*, which seeks to protect Long Island’s drinking water by minimizing pesticide use where possible. Most of Long Island’s drinking water is provided by a sole source aquifer system that is overlain by sandy, permeable soils, making pesticide contamination a major concern. The strategy seeks to address this problem by requiring DEC to complete the following steps: (1) conduct an initial assessment of active ingredients

(AI) to identify the AIs found most frequently in groundwater on Long Island and their associated risks and select the AIs for which pollution protection measures need to be taken; (2) convene and chair workgroups to study specific AIs and pollution prevention measures; (3) based on work group information, identify and prioritize pesticide pollution prevention measures appropriate for each AI, conduct research on alternative products and practices as well as outreach and education, encourage voluntary label revisions, and consider restricting products to use by certified applicators; (4) track results and assess need for additional modifications, including adoption of regulatory changes, if necessary; and (5) maximize department use of water quality monitoring for pesticides. DEC is accepting comments on the draft strategy until **April 30, 2013**; a pair of public hearings has been scheduled on Long Island in early April. The draft strategy can be found on DEC's website at: www.dec.ny.gov/chemical/87125.html.

Implications: The draft strategy is primarily of interest to pesticide applicators on Long Island.

OTHER

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

March 25, 2013: Deadline for submitting comments on EPA's proposed SIP call addressing excess emissions during startup, shutdown and malfunction events. See the February 22, 2013 Federal Register at www.gpo.gov/fdsys for details.

March 25, 2013: Deadline for submitting comments on EPA's proposed renewable fuel standards for 2013. See the February 7, 2013 Federal Register at www.gpo.gov/fdsys for details.

April 1, 2013: Deadline for submitting data/information on the possible regulation of lead paint-based hazards associated with renovation, repair and painting activities on or in public and commercial buildings. See the December 31, 2012 Federal Register at www.gpo.gov/fdsys for details.

April 2, 2013: Deadline for submitting comments on DEC's proposed repeal of its indirect source regulations. See DEC's website at www.dec.ny.gov/regulations/propregulations.html for details.

April 12, 2013: Deadline for submitting comments on DEC's draft *Screening and Assessment of Contaminated Sediment* guidance. See DEC's website at www.dec.ny.gov/docs/fish_marine_pdf/contamsedimentrev.pdf for details.

April 18, 2013: Deadline for submitting comments on EPA's proposed quality assurance plan program to ensure validity of RINs under the RFS program. See the February 21, 2013 Federal Register at www.gpo.gov/fdsys for details.

April 22, 2013: Deadline for submitting comments on DEC's draft *Environmental Audit Incentive Policy*. See DEC's website at www.dec.ny.gov/regulations/2374.html for details.

April 30, 2013: Deadline for submitting comments on DEC's *Draft Long Island Pesticide Pollution Prevention Strategy*. See DEC's website at www.dec.ny.gov/chemical/87125.html for details.