

# Young / Sommer LLC

## ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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**Final Statutes, Regulations, Guidance and Cases**

Citation	Summary	Implications	Schedule/Notes
<b>AIR</b>			
<p>NEW YORK STATE <b>Sulfur-in-Fuel Standards</b> 6 NYCRR subpart 225-1</p>	<p>DEC <b>overhauled its sulfur-in-fuel standards</b>, which limit the sulfur content of petroleum-based oil and solid fuels. DEC repealed the existing 6 NYCRR subpart 225-1 and replaced it with a new subpart 225-1 that: (1) incorporates the limit on the sulfur content of No. 2 heating oil enacted by the state legislature in 2010; (2) lowers the allowable sulfur content of residual oil and distillate oil other than No. 2 heating oil; (3) deletes outdated provisions; and (4) imposes new recordkeeping and reporting requirements. Major changes include:</p> <ul style="list-style-type: none"> <li>• Limiting the sulfur content of No. 2 heating oil purchased for use in industrial, commercial and residential sources to 15 parts per million (ppm) or less effective July 1, 2012.</li> <li>• Reducing the allowable sulfur content of other fuels burned in stationary combustion installations as follows: (1) distillate oil, 15 ppm; (2) residual oil, 5,000 ppm (lower downstate); and (3) waste oil, 7,500 ppm. The regulations prohibit the purchase of higher sulfur fuels as of July 1, 2014; in the case of distillate and residual oils, facilities may use existing supplies until July 1, 2016. Current sulfur-in-fuel standards remain in place until then, with some exceptions.</li> <li>• Establishing monitoring requirements for certain larger sources.</li> <li>• Requiring regulated entities to keep records documenting compliance with the rule and specifying what information must be included in records retained by oil/coal sellers.</li> <li>• Requiring data collected pursuant to the subpart to be tabulated and summarized.</li> <li>• Requiring owners of facilities with Title V permits to provide records and summaries to DEC on a semiannual basis.</li> <li>• Requiring owners subject to the sulfur content limits to report receipt of non-complying fuels at the end of each calendar quarter in which exceedances occur.</li> </ul> <p>Consistent with the previous regulation, the new rule authorizes exceptions for fuel shortages and variances for fuel mixtures, equivalent emission rates, and experiments.</p> <p>The rule can be found on DEC’s website at: <a href="http://www.dec.ny.gov/regulations/propregulations.html">www.dec.ny.gov/regulations/propregulations.html</a>.</p>	<p>The rule is potentially of interest to anyone who sells or purchases oil or solid fuels for use in stationary combustion installations, such as boilers. Among other things, the rule lowers the allowable sulfur content for several common types of fuel, including distillate oil (e.g., No. 1 and 2 fuel oil), residual oil (e.g., No. 4, 5 and 6 fuel oil), and waste oil, as defined in the rulemaking. It also imposes significant additional recordkeeping and reporting requirements on both fuel sellers and purchasers, including a new requirement that Title V facilities report their tabulated sulfur content information to DEC every six months, presumably as part of their Title V semi-annual report.</p>	<p>The rule took effect April 5, 2013.</p> <p>In response to public comment, DEC revised the regulation to prohibit the purchase rather than the firing of No. 2 heating oil as of July 1, 2012 to allow facilities time to use up existing stocks.</p>

Citation	Summary	Implications	Schedule/Notes
<b>HYDRAULIC FRACTURING</b>			
<p>NEW YORK STATE <b>Recent Hydraulic Fracturing Developments</b></p>	<p>The <b>status of hydraulic fracturing in New York remains uncertain</b> in the wake of expiration of DEC’s February 27, 2013 deadline for finalizing its hydraulic fracturing regulations, to be set forth at 6 NYCRR Parts 550-556, 560 and related provisions. Originally, DEC planned to rely solely on a Supplemental Generic Environmental Impact Statement (SGEIS) as a basis for issuing hydrofracking permits. Concerned that the SGEIS was not sufficient, DEC later proposed hydrofracking regulations. With the expiration of the deadline under the State Administrative Procedure Act for finalizing the regulations, the DEC Commissioner has indicated that the Department could issue permits without new regulations by relying on the SGEIS. However, the SGEIS will not be issued until the New York State Department of Health completes its review of the health impacts of hydrofracking.</p> <p>In another important hydrofracking development, a third New York trial court has upheld local zoning laws restricting hydrofracking. In <i>Lenape Resources, Inc. v. Town of Avon</i>, Index No. 1060-2012 (Sup. Ct. Livingston Co. 3/15/13), the Town of Avon adopted a one-year moratorium on natural gas drilling under its zoning laws. The court concluded that New York Oil, Gas and Solution Mining Law (OGSML) § 23-0303(2) did not preempt Avon’s zoning law. Section 23-0303(2) provides that the OGSML supersedes all local laws relating to the regulation of oil, gas and solution mining, with certain exceptions. While suggesting that it might have found preemption were it considering the OGSML in a vacuum, the court indicated it was compelled by the New York Court of Appeals decision in <i>Matter of Frew Run Gravel Products v. Town of Carroll</i>, 71 NY2d 126 (1987) to reach the contrary conclusion. The court in <i>Frew Run</i> found that similar language in the mined land reclamation law prohibited local governments from regulating how mining was conducted but did not bar them from regulating land use through zoning. The court went on to reject the plaintiff’s remaining objections to the zoning moratorium.</p>	<p>The uncertain state of the review process suggests it will be some time before hydrofracking is allowed in New York, assuming it is approved at all.</p>	<p>The New York Appellate Division currently is considering appeals of several earlier decisions upholding local zoning laws banning natural gas drilling.</p>

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<b>WATER</b>			
<p>FEDERAL  <b>Effluent Limitations Guidelines and Performance Standards for Pollutant Discharges from Construction Sites</b>                      40 CFR Part 450                      78 Fed. Reg. 19434                      (Apr. 1, 2013)</p>	<p>EPA <b>proposed to revise its effluent limitations guidelines and standards for the construction and development point source category to delete the numeric discharge standard for turbidity and make other changes.</b> In December 2009, EPA established minimum erosion and sediment control, soil stabilization, and pollution prevention measures to reduce turbidity and sediment discharges from construction sites. In addition, sites disturbing 10 acres or more were required to comply with a controversial turbidity limit of 280 nephelometric turbidity units (NTUs) and monitor compliance with that limit. In a lawsuit brought by the National Association of Home Builders challenging the NTU standard, EPA conceded on a motion for partial vacature of the final rule that it “improperly interpreted the data” and that the calculations in the record were therefore inadequate to support the 280 NTU limit. EPA stayed the numeric standard in 2010 and entered into a settlement in 2012 in which it agreed to withdraw the standard and make other changes to the Part 450 regulations. In fulfillment of that agreement, EPA is proposing to: (1) withdraw the numeric turbidity effluent limitation and monitoring requirements; (2) add a definition of “infeasible” to clarify when permittees can elect not to install specific controls; and (3) more clearly link the requirement to control soil erosion to the discharge of pollutants.</p> <p>The proposed rule can be found in the April 1, 2013 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>.</p>	<p>The proposed rulemaking is primarily of interest to those engaged in construction activities. Although EPA has abandoned the numeric turbidity limit, the agency “continues to be interested in data and information regarding numeric discharge standards for construction sites,” leaving the door open to establishing a numeric limit in the future. 78 Fed. Reg. at 19440.</p>	<p>EPA is accepting comments on the proposed rule until <b>May 31, 2013.</b></p>

Citation	Summary	Implications	Schedule/Notes
<b>ENVIRONMENTAL REVIEW</b>			
<p><b>NEW YORK STATE Extension of Effective Date of Revised EAFs; Draft Full EAF Workbook</b> 6 NYCRR § 617.20, Appendices A and B</p>	<p><b>DEC extended the effective date of its revised long and short environmental assessment forms (EAF)</b> from April 1, 2013 to October 7, 2013 to allow it time to finalize the workbooks and other resources needed to help project sponsors and agencies use the revised forms. The EAFs are required under the State Environmental Quality Review Act (SEQRA) to assess the environmental significance of projects and determine whether to require a full environmental impact statement. Major changes to the EAFs adopted in 2012 include:</p> <ul style="list-style-type: none"> <li>• Revising the forms to better gather information needed to analyze zoning and planning actions and address emerging environmental issues such as brownfield redevelopment and climate change.</li> <li>• Merging the contents of visual assessment and determination of nonsignificance forms into the main forms.</li> <li>• Making the forms a better tool for gathering information.</li> </ul> <p>In addition to announcing the extension, DEC also made available for comment a draft workbook to help applicants and agencies complete the full EAF. The workbook provides instruction on how to answer each question in the full EAF, which is organized into three parts: (1) Project Information (completed by applicant or project sponsor); (2) Impact Assessment (completed by lead agency); and (3) Determination of Significance (completed by lead agency). For each question relating to Parts 1 and 2 of the full EAF, the workbook provides background information explaining what information the question is seeking and specific guidance on answering the question. With respect to Part 2, Impact Assessment, the workbook also identifies what questions in Part 1 should be reviewed, provides a list of possible subjects to consider when assessing the impact of the project, and offers examples illustrating each question. Many of these questions are designed to elicit information on the possible size of the impact. If the agency checks moderate to large impact for one or more of the questions in Part 2, it must proceed to Part 3, which consists of general instructions on evaluating significance as well as a series of examples illustrating how significance should be assessed and offering appropriate statements of significance for each example.</p> <p>The draft workbook can be found at: <a href="http://www.nysfeaf.net">www.nysfeaf.net</a>.</p>	<p>The long and short EAFs are used by agencies to assess the environmental significance of actions they plan to undertake, fund or approve and so are crucial to the SEQRA process. The long EAF had not been substantially revised since 1978, while the short EAF had not been substantially revised since 1987. The draft full EAF workbook is potentially of interest to anyone involved in the environmental assessment process under SEQRA.</p>	<p>The new forms take effect October 7, 2013 (extended from April 1, 2013). DEC is taking comment on the draft Full EAF Workbook until <b>May 20, 2013</b>.</p> <p>DEC previously made available for comment a draft workbook on completing the short EAF. The public comment period on the short EAF workbook has closed.</p>

## Other Recent Developments (Final)

### AIR

FEDERAL: A federal appeals court recently concluded that **EPA has the authority under the Prevention of Significant Deterioration (PSD) program to review projections of future emissions resulting from facility modifications at any time** and is not required to wait for data from the completed project. In *U.S. v. DTE Energy Co.*, 2013 WL 1235603 (6<sup>th</sup> Cir. 2013), DTE Energy determined that its planned facility modification would not trigger PSD and submitted calculations to that effect to state permitting authorities who took no action. EPA learned of the project two months after construction began and issued a notice of violation, contending that the project resulted in a significant net emissions increase and therefore constituted a major modification that triggered PSD. In a split decision, the appeals court found that while the PSD program does not contemplate agency approval of emissions projections prior to construction, EPA's enforcement authority must nevertheless extend to ensuring that operators follow the regulations in making those projections. The court therefore found that preconstruction projections are subject to enforcement to ensure that they were made in accordance with the requirements of the PSD regulations. The dissent challenged this conclusion, arguing that allowing EPA to challenge a facility's emissions projections in court amounts to requiring prior approval of those projections.

Implications: The case is potentially of interest to major facilities under the PSD or nonattainment New Source Review programs.

### HAZARDOUS/SOLID WASTE

FEDERAL: EPA issued an **interpretation of its polychlorinated biphenyl (PCB) regulations that would generally allow the recycling of plastic separated from automobile shredder residue** provided certain conditions are met. In an effort to prevent the introduction of PCBs into plastics, the Institute of Scrap Metal Recycling Industries developed Voluntary Procedures for Recycling Plastics from Shredder Residue. With the recent notice, EPA is allowing facilities that follow this procedure to consider automobile plastics as an "excluded PCB product" that is exempt from the general prohibition against PCB manufacturing, processing, distribution in commerce and use. The final interpretation can be found in the April 5, 2013 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The interpretation is primarily of interest to automobile recyclers.

FEDERAL/NEW YORK STATE: EPA published a **direct final rule authorizing approval of the 2006 revisions to New York's used oil regulations**, set forth at 6 NYCRR subpart 374-2. The approval means New York's program now satisfies the used oil component of EPA's Resource Conservation and Recovery Act (RCRA) program. The rulemaking includes a detailed list of more stringent New York requirements; it also identifies those requirements that are "broader in scope" than the federal program and so

cannot be enforced by EPA. The direct final rule can be found in the March 11, 2013 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys). The final authorization takes effect May 10, 2013 unless EPA receives adverse written comments by April 10, 2013.

Implications: The approval is potentially of interest to facilities subject to the used oil regulations.

## WATER

FEDERAL: The U.S. Supreme Court held that the Clean Water Act and its implementing regulations **do not require a National Pollutant Discharge Elimination System (NPDES) permit to discharge channeled stormwater runoff from logging roads** into navigable waters. When it rains, water containing sediment runs off logging roads into ditches, culverts and channels and, eventually, to nearby streams. EPA's NPDES implementing regulations require permits for channeled stormwater runoff only if the discharges are "associated with industrial activity." The court found in *Decker v. Northwest Environmental Defense Center*, 2013 WL 1131708 (2013) that EPA's conclusion that the conveyances at issue were not directly related to "manufacturing, processing or raw materials storage areas at an industrial plant" but were instead the result of harvesting of raw materials was reasonable and that the discharges at issue did not, therefore, require a NPDES permit. The court also rejected the argument that the case was moot because EPA had amended its regulation after the lawsuit was brought to expressly declare that "stormwater discharges from logging roads do not constitute stormwater discharges associated with industrial activity."

Implications: The case is primarily of interest to timber companies.

NEW YORK STATE: DEC published its final environmental impact statement (FEIS) issued in conjunction with proposed revisions to the State Pollutant Discharge Elimination System (SPDES) and solid waste regulations to reduce the requirements applicable to certain **concentrated animal feeding operations (CAFOs)** and revise the rules governing land application, storage and composting of certain organic materials. The rule changes, which were proposed late last year, call for: (1) adding a definition of CAFO to 6 NYCRR subpart 750-1 and revising the list of facilities exempt from the SPDES permit requirement to include medium CAFOs that have 200-299 mature dairy cows and do not discharge wastewater; (2) revising the state's land application regulations at 6 NYCRR subpart 360-4, to exempt certain land application facilities with SPDES permits, among other changes; and (3) revising the composting regulations at 6 NYCRR subpart 360-5 to add exemptions for anaerobic digestion facilities at farms or CAFOs and make other changes. The FEIS contains background information about New York's dairy and yogurt industry and CAFOs, the potential environmental impacts of CAFOs, proposed mitigation measures, and regulatory alternatives; it can be found on DEC's website at: [www.dec.ny.gov/permits/6285.html](http://www.dec.ny.gov/permits/6285.html).

Implications: The FEIS and accompanying rulemaking were developed largely to promote the yogurt industry.

## OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: The Occupational Safety and Health Administration (OSHA) issued several **guidance documents of potential interest to general industry**. The first three documents focus on implementation of OSHA's new hazard communication standard (HCS), which brings the nation's chemical classification, labeling, training and other requirements in line with the United Nations' Globally Harmonized System of Classification and Labeling of Chemicals. The three documents recently issued by OSHA include: (1) an OSHA Brief summarizing the new chemical labeling and pictogram requirements, which standardize the information required on chemical labels, including requiring the use of uniform signal words, hazard statements, precautionary statements and pictograms; (2) an OSHA Brief on the new safety data sheet (SDS) requirements summarizing the required elements of the new 16-part uniform SDS; and (3) a Fact Sheet summarizing the training requirements and deadlines under the revised HCS program. These and other documents relating to the new HCS can be found at: [www.osha.gov/dsg/hazcom/index.html](http://www.osha.gov/dsg/hazcom/index.html). In addition, OSHA recently issued a new *General Industry Digest*, a 106-page overview of standards-related topics, including fatality, injury and illness information, walking-working surfaces, means of egress, occupational health and environmental controls, hazardous materials and agents, personal protective equipment, and hazardous equipment and machinery, among many other subjects. The *General Industry Digest* can be found at: [www.osha.gov/Publications/osha\\_2201.pdf](http://www.osha.gov/Publications/osha_2201.pdf). OSHA has issued a similar document for construction standards.

Implications: These documents are potentially of interest to facilities regulated under OSHA's general industry standards.

## ZONING

NEW YORK STATE: New York's highest court recently issued a decision **invalidating a local zoning law banning check-cashing businesses** in districts not zoned as industrial or light manufacturing and requiring existing businesses that violate the zoning law to relocate within five years. In *Sunrise Check Cashing v. Town of Hempstead*, 2013 WL 530640 (2013), the town passed the ban after finding that the measure represented "sound public policy" because it encouraged young people and poor people to establish checking and savings accounts and eliminated predatory and exploitive financial enterprises in commercial areas. In rejecting the law, the New York Court of Appeals concluded that it represented an improper exercise of zoning power because it was "concerned not with the use of the land but with the business done by those who occupy it." The court rejected the town's attempt to justify the law on the ground that check cashing businesses increase the potential for armed robbery, noting that there was no evidence in the record that the law was adopted as a public safety measure.

Implications: The decision clarifies that zoning laws are concerned with the use of the land and not the identity of the user.

## OTHER

FEDERAL: EPA Region 2 recently made available a document entitled *Best Management Practices for Marinas*. The document highlights practices EPA believes can improve the environmental performance of marinas in reducing pollution through the more



efficient use of materials, energy, water and land. Subjects covered by the document include: fuel management (i.e., storage, fuel tank disposal, and fuel station operation); facility cleaning and maintenance (i.e., cleaning product selection and use, floor drains, and air compressors); boat maintenance (i.e., pressure washing); stormwater nonstructural and structural best management practices; dredging impacts; recycling and waste management, including fish and pet waste; land use; energy and water efficiency; green products; landscaping; boater education; and emergency planning. The document can be found on EPA Region 2's website at: [www.epa.gov/region02/p2/documents/best\\_management\\_practices\\_marina\\_facilities\\_.pdf](http://www.epa.gov/region02/p2/documents/best_management_practices_marina_facilities_.pdf).

Implications: The document is primarily of interest to marina owners/operators.

## Other Recent Developments (Proposed)

### AIR

FEDERAL: EPA proposed to **amend the Title V operating permit program regulations** to clarify that material information known to the facility owner/operator must be identified and addressed in Title V compliance certifications. In 2003, EPA mistakenly removed the following sentence from 40 CFR §70.6(c)(5)(iii)(B) and §71.6(c)(5)(iii)(B) in response to a court remand: "If necessary, the owner or operator also shall identify any other material information that must be included in the certification to comply with section 113(c)(2) of the Act, which prohibits knowingly making a false certification or omitting material information." With this rulemaking, EPA proposed to restore this sentence to the Title V air permitting regulations. The change clarifies that owners/operators of Title V facilities must consider all available information in assessing their compliance status, not just that generated by compliance methods specified in the permit. EPA is accepting comments on the proposed revision until **May 28, 2013**; the rulemaking can be found in the March 29, 2013 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The rule is potentially of interest to Title V facilities.

### CLIMATE CHANGE

FEDERAL: EPA proposed to **amend its greenhouse gas (GHG) reporting rule** to incorporate changes to the global warming potential (GWP) of some GHGs, add GWPs for additional fluorinated GHGs, and make other changes. The GHG reporting rule, 40 CFR Part 98, requires certain facilities and fuel/chemical suppliers to annually report their GHG emissions to EPA in accordance with source category-specific protocols contained in the regulation. With this rulemaking, EPA proposed to conform the GWPs contained in the regulation to those used in the International Panel on Climate Change's Fourth Assessment Report and add 26 new fluorinated GHGs and their GWPs to Part 98. These changes will help ensure consistency between Part 98 GHG reporting results and the Inventory of U.S. Greenhouse Gas Emissions and Sinks EPA compiles annually to meet its international commitments. The proposed rule includes implementation schedules for existing reporters and for facilities required to report for the first time. EPA also is seeking comment on options for updating past submissions to reflect the new GWPs. In addition, the rulemaking contains numerous technical

corrections, clarifying revisions and other changes to specific subparts to improve the quality and consistency of the data collected by the agency; it also includes confidentiality determinations for the new or substantially revised reporting data elements. EPA is accepting comments on the proposed revisions until **May 17, 2013**; the rulemaking can be found in the April 2, 2013 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The rule is potentially of interest to facilities currently required to report emissions under the GHG reporting rule as well as facilities that use fluorinated gases not currently covered by the rule.

NEW YORK STATE: DEC published a **draft scope in preparation for issuing a SGEIS addressing planned amendments to New York's regulations implementing the Regional Greenhouse Gas Initiative (RGGI)**, which are set forth at 6 NYCRR Part 242 (CO<sub>2</sub> Budget Trading Program) and 21 NYCRR Part 507 (CO<sub>2</sub> Allowance Auction Program). The states participating in the RGGI established a multi-state GHG cap-and-trade program for power plants in the Northeast based on model regulations developed by the RGGI group. In February 2013, the RGGI states revised the model regulations to, among other things: (1) significantly reduce the RGGI emission cap; (2) establish a cost containment reserve (i.e., a pool of allowances to be made available if CO<sub>2</sub> allowance prices exceed specified thresholds); and (3) require interim compliance demonstrations in each of the two years before the end of the three-year compliance period. These amendments are intended to encourage CO<sub>2</sub> emission reductions and strengthen the flexibility provisions of the cap-and-trade program. As lead agency, DEC has determined that the planned changes to the RGGI implementing regulations will have a positive impact on the environment; however, the Department intends to prepare an SGEIS to consider the possible impact on the environment of "emission leakage" – the potential for the RGGI program to cause a shift in electricity generation from capped sources to high-emitting sources that are not subject to the program. DEC is accepting comments on the draft scope until **May 6, 2013**; it can be found on DEC's website at: [www.dec.ny.gov/permits/89881.html](http://www.dec.ny.gov/permits/89881.html).

Implications: The scope is primarily of interest to owners/operators of power plants subject to the RGGI.

## HAZARDOUS/SOLID WASTE

FEDERAL: EPA made available for comment a revision to its *Waste Analysis at Facilities that Generate, Treat, Store and Dispose of Hazardous Wastes: A Guidance Manual*. The guidance provides an overview of the waste analysis process for both generators and treatment, storage and disposal facilities (TSDFs) as well as a detailed summary of the steps for developing and implementing a waste analysis plan (WAP), including: the content and organization of the WAP; selecting waste analysis parameters, sampling procedures, and laboratories and laboratory methods; quantifying data uncertainty; determining reevaluation frequencies; special procedural requirements (relating to receiving wastes generated off-site, combustion facilities, ignitable, reactive and incompatible waste, and land disposal restriction compliance); discrepancy and rejection policies; recordkeeping; and corrective action measures. It also includes a WAP checklist and several sample WAPs. EPA is accepting comments on the revised WAP guidance until **April 30, 2013**; it can be found on EPA's website at: [www.epa.gov/epawaste/hazard/refdocs.htm](http://www.epa.gov/epawaste/hazard/refdocs.htm).

Implications: The guidance is potentially of interest to hazardous waste generators and TSDFs.

NEW YORK STATE: DEC made available for comment a **draft policy memorandum authorizing regulated parties to store used, broken cathode ray tubes (CRTs) and CRT glass removed from CRTs under less stringent federal hazardous waste regulations**. CRTs and CRT glass are commonly found in older televisions, computer monitors and other similar equipment. Because these materials contain toxic quantities of lead, they traditionally were managed as hazardous waste. In 2006, EPA adopted special rules for handling CRTs that are designed to simplify day-to-day management and encourage recycling. With the recent policy memorandum, entitled *Use of Enforcement Discretion for Cathode Ray Tubes (CRT) Glass*, DEC announced its intention to defer to the 2006 federal standards until it revises the state hazardous waste regulations to address CRTs. The policy allows recyclers to separate CRTs into their key components and store the materials separately without triggering the hazardous waste regulations provided the facility complies with the federal CRT rules. DEC hopes that the memorandum will facilitate electronics recycling in New York. DEC is accepting comments on the policy memorandum until **April 26, 2013**; it can be found on DEC's website at: [www.dec.ny.gov/regulations/8489.html](http://www.dec.ny.gov/regulations/8489.html).

Implications: The policy memorandum is primarily of interest to electronics recyclers.

## CHEMICALS

FEDERAL: EPA has announced several important developments relating to the **Toxic Release Inventory (TRI) program**, implemented as part of the 1986 Emergency Planning and Community Right-to-Know Act. The TRI program requires certain industrial facilities to submit annual reports documenting the amount of certain chemicals that are discharged to air or water or disposed of on land. EPA recently announced the following developments relating to the TRI program: (1) EPA denied a petition to remove acetonitrile from the list of chemicals required to be reported under TRI after determining that it has the potential to cause serious or irreversible chronic health effects in humans and so does not meet the delisting criteria, 78 Fed. Reg. 14241 (Mar. 5, 2013); (2) EPA proposed to add ortho-nitrotoluene to the list of TRI chemicals based on its classification by the National Toxicology Program in its 12<sup>th</sup> Report on Carcinogens as "reasonably anticipated to be a human carcinogen," 78 Fed. Reg. 15913 (Mar. 13, 2013) (comments due **May 13, 2013**); and (3) EPA added two new pollution prevention features to its online reporting process for toxic chemical releases under the TRI program. The first feature generates an alert message when a facility reports large reductions in releases at the same time it reports increases in production, giving facilities the opportunity to explain the reasons for the change. The second feature automatically calculates a facility's production ratio (relationship between TRI quantities and production).

Implications: The changes are potentially of interest to facilities required to file TRI reports.

## OTHER

FEDERAL: The Pipeline and Hazardous Materials Safety Administration published **draft information papers containing industry and first responder feedback on the Hazardous Materials Automated Cargo Communications for Efficient and Safe**

**Shipments (HM-ACCESS) initiative**, a pilot project to evaluate the feasibility of transitioning to electronic shipping papers. The first information paper addresses the concerns of emergency response providers and enforcement personnel; the second focuses on shippers and carriers. Common requirements identified by all stakeholders are: equivalent or higher level of safety to current requirements; internationally harmonized and uniform information; secured from potential threats; capable of allowing shippers to be responsible for data entry and error correction; cost effective; and able to allow e-shipping papers to be accessible through wireless capabilities. With respect to shippers, motor carriers pose the greatest concern because their operations are smaller and far less centralized. Both emergency responders and shippers expressed concern about possible gaps in communication caused by inadequate equipment and/or connectivity dead zones. The draft first responder paper can be found at: [www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/Draft\\_ERLEP.pdf](http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/Draft_ERLEP.pdf). The draft shipper and carrier paper can be found at: [www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/Draft\\_ESPSC.pdf](http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Files/Draft_ESPSC.pdf).

Implications: The draft information papers are primarily of interest to hazardous material shippers and emergency responders.

NEW YORK STATE: DEC is **accepting applications for New York's Annual Environmental Excellence Awards**, which recognize businesses, educational and health care institutions, governments, non-profit organizations, and individuals that have achieved environmental excellence through innovative and environmentally sustainable practices or creative partnerships. Applicants must be in good standing with the Environmental Conservation Law and pertinent local laws; projects must go beyond standard techniques or regulatory requirements or demonstrate measurable environmental and economic benefits. Complete applications must include an application cover sheet and application checklist as well as project information, including a summary, general description, and information relating to: innovation, sustainability, and/or partnerships; superior practices; measurable environmental, economic and social benefits; commitment and leadership in pursuit of environmental excellence; transferability to other users; funding sources; and other details and supporting documentation. DEC is particularly interested in acknowledging projects that achieve significant environmental benefits through: initiatives to reduce greenhouse gas emissions; cutting edge pollution prevention technologies; initiatives to "green" businesses; innovative solar, wind and biomass projects; energy efficiency improvements; and other projects. Applications must be postmarked by **May 10, 2013**. The application form and instructions can be found on DEC's website at: [www.dec.ny.gov/public/945.html](http://www.dec.ny.gov/public/945.html).

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

## Upcoming Deadlines

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

**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](http://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 renewable fuel standards program. See the February 21, 2013 Federal Register at [www.gpo.gov/fdsys](http://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](http://www.dec.ny.gov/regulations/2374.html) for details.

**April 26, 2013:** Deadline for submitting comments on DEC's draft policy entitled *Use of Enforcement Discretion for Cathode Ray Tube (CRT) Glass*. See DEC's website at [www.dec.ny.gov/regulations/8489.html](http://www.dec.ny.gov/regulations/8489.html).

**April 30, 2013:** Deadline for submitting comments on EPA's draft *Waste Analysis at Facilities that Generate, Treat, Store and Dispose of Hazardous Wastes: A Guidance Manual*. See EPA's website at [www.epa.gov/epawaste/hazard/refdocs.htm](http://www.epa.gov/epawaste/hazard/refdocs.htm) 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](http://www.dec.ny.gov/chemical/87125.html) for details.

**May 6, 2013:** Deadline for submitting comments on DEC's draft scope addressing planned revisions to New York's RGGI implementing regulations. See DEC's website at [www.dec.ny.gov/permits/89881.html](http://www.dec.ny.gov/permits/89881.html) for details.

**May 10, 2013:** Deadline for submitting application for DEC's Environmental Excellence Awards. See DEC's website at [www.dec.ny.gov/public/945.html](http://www.dec.ny.gov/public/945.html) for details.

**May 13, 2013:** Deadline for submitting comments on EPA's proposal to include ortho-nitrotoluene on the list of TRI chemicals. See the March 13, 2013 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**May 17, 2013:** Deadline for submitting comments on EPA's proposed revisions to the GHG reporting rule. See the April 2, 2013 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**May 20, 2013:** Deadline for submitting comments on DEC's draft Full EAF Workbook. See DEC's website at [www.nysfeaf.net](http://www.nysfeaf.net) for details.

**May 28, 2013:** Deadline for submitting comments on EPA's proposed clarification of the compliance certification requirements of its Title V operating permit regulations. See the March 29, 2013 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

**May 31, 2013:** Deadline for submitting comments on EPA's proposed revisions to the stormwater discharge effluent limitation guidelines and standards for the construction and development point source category. See the April 1, 2013 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.