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ENVIRONMENTAL BREAKFAST CLUB
REGULATORY SUMMARY

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Final Statutes, Regulations, Guidance and Cases

Citation	Summary	Implications	Schedule/Notes
CLIMATE CHANGE			
FEDERAL **The President's Climate Action Plan**	In late June 2013, **President Obama released his Climate Action Plan** outlining his program for helping the United States respond to the threat of climate change. The plan contains three "key pillars": (1) cutting carbon pollution in America; (2) preparing the United States for the impacts of climate change; and (3) leading international efforts to combat climate change and prepare for its impacts. Of particular note, the plan calls for EPA to regulate carbon dioxide (CO_2) emissions from existing power plants. In April 2012, EPA proposed controversial standards restricting CO_2 emissions from new and reconstructed power plants under the New Source Performance Standards (NSPS) program. EPA plans to repropose these standards by September 20, 2013 and propose guidelines for existing power plants under 42 USC §7411(d) by June 1, 2014. Once the guidelines are finalized, the states must submit implementation plans explaining how they intend to meet the guidelines. Other proposals of interest include: • Significantly increasing the number of renewable energy projects on public lands and at federal facilities. • Directing federal agencies to streamline the siting, permitting, and review process for transmission projects. • Developing new heavy-duty vehicle fuel economy standards for model year 2019 and later vehicles and increasing deployment of cleaner fuels. • Establishing stricter energy efficiency standards for appliances and federal buildings. • Curbing emissions of hydrofluorocarbons, a potent greenhouse gas, by encouraging development of alternatives. • Reducing methane emissions by developing an interagency methane strategy and pursuing collaborative approaches to reducing methane. • Directing federal agencies to assist local communities in preparing for extreme weather events. Information about the President's Climate Action Plan can be found at: www.whitehouse.gov/sites/default/files/image/president27sclimateactionplan.pdf.	Congressional Republicans condemned the plan, arguing that it will destroy jobs and result in significant increases in electricity prices. Environmental groups, while largely praising the plan, suggested Congress must eventually implement a carbon tax to provide the necessary incentive to switch to cleaner fuels. Given the current partisan atmosphere in Washington, significant congressional action on climate change will likely prove elusive.	

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
AIR/CHEMICAL			
FEDERAL **Formaldehyde Emissions from Composite Wood Products** 40 CFR Part 770 78 Fed. Reg. 34796 (June 10, 2013); 78 Fed. Reg. 34820 (June 10, 2013)	EPA proposed a **pair of rules to implement the 2010 Formaldehyde Standards for Composite Wood Products Act**, which established formaldehyde emissions standards for hardwood plywood, particleboard, and medium density fiberboard (collectively, composite wood products) and required EPA to develop regulations to implement the standards. Many of the resins used to produce composite wood products contain formaldehyde, a colorless, strong-smelling gas that is both an irritant and a probable human carcinogen. The first proposed rule implements emission standards for composite wood products sold, supplied, offered for sale or manufactured in the United States or imported into the United States. The rule: (1) identifies the wood products subject to regulation, including an exemption for certain laminated products as well as various statutory exemptions; (2) establishes formaldehyde emission standards; (3) requires certification by a third party that the product meets the emission standards; (4) establishes formaldehyde emission testing and quality assurance/quality control requirements; (5) establishes chain-of-custody, recordkeeping and labeling requirements; and (6) sets a deadline for manufacturers to sell their remaining stocks of noncompliant products. The second rule establishes the framework for the certification program, which calls for third-party certifiers to be accredited by EPA-recognized accreditation bodies. These accredited third parties would then certify that composite wood products meet the formaldehyde standards. The proposed rule identifies the roles and responsibilities of the parties involved in the certification process as well as the criteria for participation in the program. The proposed rules can be found in the June 10, 2013 Federal Register at: www.gpo.gov/fdsys.	The proposed rules are potentially of interest to composite wood product manufacturers and companies that manufacture the formaldehyde-based chemicals used in the manufacture of composite wood products. The proposed rules also are of interest to industries that use composite wood, such as manufacturers and distributors of manufactured and prefabricated homes, recreational vehicles, and furniture.	EPA is accepting comments on the proposed rules until **August 9, 2013**.

Citation	Summary	Implications	Schedule/Notes
AIR			
NEW YORK STATE **Economic and Technical Analysis for Reasonably Available Control Technology (RACT)** DEC Program Policy DAR-20	DEC **made available for comment a draft update of Program Policy DAR-20, *Economic and Technical Analysis for Reasonably Available Control Technology (RACT)***. The policy includes procedures for conducting the economic and technical feasibility analysis used to determine RACT and evaluate requests for source-specific RACT determinations. RACT is defined as the "[l]owest emission limit that a particular source is capable of meeting by application of control technology that is reasonably available, considering technological and economic feasibility." Numerous common sources of nitrogen oxides (NOx) and volatile organic compounds (VOCs) must comply with RACT. The policy establishes the thresholds for determining economic feasibility for both NOx and VOCs. It also describes the procedure for requesting a source-specific RACT determination. The request must be submitted to DEC as part of an application for permit renewal or modification and must include various information, including the proposed control technology or strategy, price quotes from vendors, and an economic analysis of air pollution control equipment using a form included with the document. Draft DAR-20 can be found on DEC's website at: www.dec.ny.gov/chemical/91851.html.	The Program Policy is primarily of interest to facilities/activities subject to DEC RACT standards. These include stationary combustion installations, surface coating, petroleum and volatile organic liquid storage and transfer, and graphic arts, among many others. Where a particular source cannot meet the standards set forth in the regulations, DEC will rely on DAR-20 to set source-specific RACT.	DEC is accepting comments on the draft Program Policy until **July 26, 2013**.

Citation	Summary	Implications	Schedule/Notes
CLIMATE CHANGE			
NEW YORK STATE **Carbon Dioxide Budget Trading Program** 6 NYCRR Part 242	DEC **proposed changes to New York's Regional Greenhouse Gas Initiative (RGGI) implementing regulations**, set forth at 6 NYCRR Part 242. The RGGI states established a multistate CO_2 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 various changes. With the current rulemaking, DEC is proposing revisions to 6 NYCRR Part 242 to incorporate these changes. • ***Emission cap.*** The RGGI states reduced the 2014 regional CO_2 budget from 165 million to 91 million tons, with a decline of 2.5% annually from 2015 to 2020. For allocation year 2014, the regulations reduce New York's 2014 statewide CO_2 trading program baseline budget from 64.3 million tons annually to 35.2 million tons, with an additional 2.5% reduction annually through 2020. • ***Budget adjustment.*** To address excess allowances during the first reporting period, the proposed regulations call for reducing the baseline budget during the years 2014-2020 to account for banked allowances (vintage 2009, 2010 and 2011) held by market participants after the first control period. The baseline budget also will be reduced during the years 2015-2020 to account for surplus allowances (vintage 2012 and 2013) held by market participants as of the end of 2013. • ***Cost containment reserve (CCR).*** The regulations implement 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. • ***Interim compliance obligation.*** Currently, RGGI participants must provide allowances equal to emissions at the end of a three-year control period unless several triggering events occur. The proposed rule also requires participants to hold allowances equal to at least 50% of their emissions for each of the first two years of the compliance period. • ***Reserve price.*** The proposed regulations set a minimum reserve price at auction of $2.00 in 2014, with an increase of 2.5% each year thereafter. The proposed rule can be found on DEC's website at: www.dec.ny.gov/regulations/propregulations.html.	The RGGI program applies only to power plants. Although the sale of CO_2 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 greenhouse gas (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 revised RGGI model rule and DEC's proposed implementing regulations reduce the CO_2 cap to current emissions levels and make other changes.	DEC is accepting comments on the proposed revisions until **September 9, 2013**. A public hearing is scheduled for August 26, 2013 at 2:00 p.m. at DEC Headquarters in Albany; additional hearings will be held the same week in Avon and Long Island City.

Citation	Summary	Implications	Schedule/Notes
WATER			
FEDERAL **Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category** 40 CFR Part 423 78 Fed. Reg. 34432 (June 7, 2013)	EPA **proposed to strengthen the technology-based standards for wastewater discharges from steam electric generating facilities**. These so-called "categorical standards," set forth at 40 CFR Part 423, contain effluent limits applicable to steam electric generating point sources that discharge both directly and indirectly, i.e., to a publicly owned treatment works (POTW). The proposed rule sets standards for wastewater streams from flue gas desulfurization, fly ash, bottom ash, flue gas mercury control, combustion residual leachate from landfills and impoundments, nonchemical metal cleaning wastes, and gasification of fuels such as coal and petroleum coke. Key elements of the standards are summarized below: • ***Best available technology economically achievable (BAT).*** Direct discharges from existing facilities must satisfy BAT. The rule identifies four "preferred options" for BAT that represent variations on Option 3a, which calls for: (1) "zero discharge" effluent limits for all pollutants in fly ash transport water and wastewater from flue gas mercury control systems; (2) numeric effluent limits for mercury, arsenic, selenium and total dissolved solids in wastewater from gasification processes; (3) numeric effluent limits for copper and iron in discharges of nonchemical metal cleaning wastes; and (4) effluent limits for bottom ash transport water and combustion residual leachate from landfills and surface impoundments. Each option differs in the number of waste streams covered, the size of the units controlled, and the stringency of the treatment controls to be imposed. Oil-fired and small generating units (50 megawatts or less) are subject to BAT equal to the current best practicable control technology currently available (BPT) effluent limits. • ***Pretreatment standards for existing sources (PSES).*** The PSES are equal to the proposed BAT standards with certain exceptions. • ***New source performance standards (NSPS)/pretreatment standards for new sources (PSNS).*** The NSPS (applicable to new generating units that discharge directly to surface waters) and PSNS (applicable to new units that discharge to a POTW) generally contain more stringent limits that apply to all generating units, including oil-fired and small units. The proposed regulation can be found in the June 7, 2013 Federal Register at: www.gpo.gov/fdsys.	EPA estimates that are approximately 1,100 facilities potentially covered by the proposed standards. According to EPA, steam electric power plants contribute 50-60% of all toxic pollutants discharged to surface waters by all industries currently regulated under the Clean Water Act. The existing standards were adopted in 1982 and focus on settling out particulates rather than treating dissolved pollutants. Since 1982, however, numerous facilities have implemented air pollution controls, such as scrubbers, that have resulted in new wastewater streams from power plants. The proposed revisions to 40 CFR Part 423 are intended to address the toxic pollutants contained in these new wastewater streams and otherwise update the standards.	EPA is accepting comments on the proposed rule until **September 20, 2013** (extended from August 6, 2013).

Other Recent Developments (Final)

AIR

FEDERAL: In a split decision, a federal appeals court **vacated an EPA rule authorizing states to exempt from the Prevention of Significant Deterioration (PSD) program certain industrial plants that emit greenhouse gases from biomass**. In 2011, EPA deferred regulation of CO_2 generated from non-fossil-fuel CO_2 sources such as ethanol for three years while it attempted to determine whether such sources, in fact, have an impact on climate change. In *Center for Biological Diversity v. EPA*, 2013 WL 3481511 (D.C. Cir. 2013), the Court of Appeals for the District of Columbia Circuit rejected each of the three rationales offered by EPA to support its decision to postpone regulation of biogenic CO_2 sources under the PSD program. Among other things, EPA had argued that administrative law allows agencies to promulgate regulations in a step-by-step fashion. The court rejected this argument as a basis for the deferral after finding that EPA failed to articulate what goal the regulation was expected to achieve, thus providing the court with no basis for evaluating whether the agency was, in fact, taking a first step toward achieving that goal. The court also rejected EPA's argument that attainment of the statutory objectives was impossible, noting that the agency dismissed a proposed middle-ground option that would have required biogenic CO_2 sources to obtain permits only if they failed to take into account their net carbon cycle impacts. One of the three judges on the panel concurred with the decision while arguing that the circuit court wrongfully concluded in an earlier case that the PSD statute covers CO_2. A dissenting judge would have upheld EPA's deferral rule under the one-step-at-a-time doctrine.

Implications: EPA must review information collected to date on biogenic CO_2 emissions and decide whether to attempt to permanently exclude such emissions from regulation or require permitting.

FEDERAL/NEW YORK STATE: EPA **approved revisions to New York's State Implementation Plan (SIP)** incorporating changes to the following state air regulations: (1) 6 NYCRR §212.12, adding control requirements for hot mix asphalt plants to reduce nitrogen oxide (NOx) emissions from combustion during the aggregate drying and heating process; (2) 6 NYCRR Part 220, revising the RACT requirements for NOx emissions from Portland cement plants and adding NOx RACT requirements for glass manufacturing plants; and (3) 6 NYCRR subpart 227-2, revising the NOx control requirements for a wide variety of combustion sources located at major NOx facilities. With one exception, EPA reviewed each of the regulations and concluded that they were consistent with the CAA, EPA regulations and EPA policy; EPA approved Part 220 based on DEC's commitment to submit individual RACT determinations to EPA as SIP revisions by December 1, 2013. The final approval can be found in the July 12, 2013 Federal Register at: www.gpo.gov/fdsys.

Implications: EPA's approval of the listed regulations means they can be enforced by EPA as well as DEC.

NEW YORK STATE: DEC has set the 2013 **fees for Title V facilities** consistent with the sliding scale enacted by the legislature in 2009. That law levies Title V air permit fees based on the quantity of annual emissions as follows: $45.00 per ton for facilities with total annual emissions of less than 1,000 tons; $50.00 per ton for facilities with total annual emissions of 1,000 tons or more but less than 2,000 tons; $55.00 per ton for facilities with total annual emissions of 2,000 tons or more but less than 5,000 tons; and $65.00 per ton for facilities with total annual emissions of 5,000 tons or more. The Clean Air Act requires states to impose fees on Title V facilities sufficient to cover the costs of the Title V program. Applying this principle, DEC calculated Title V fees at $249.87 per ton for 2013; however, the legislature has capped Title V fees as outlined above. Notice concerning the 2013 Title V fees can be found in the June 26, 2013 Environmental Notice Bulletin at: www.dec.ny.gov/enb/20130626_not0.html.

Implications: Title V facilities must pay permit fees according to the schedule above.

REMEDIATION

NEW YORK STATE: The New York State Department of Health (DOH) issued a **guidance letter outlining the interim testing requirements under New York's asbestos regulations for materials containing vermiculite**. In June 2012, DOH issued an informational letter declaring that the presence of asbestos can be masked by vermiculite and that all materials with greater than 10% vermiculite should be presumed to contain asbestos fibers and handled as asbestos-containing material (ACM). After the business community strenuously objected to this guidance, DOH issued new interim guidance under which the asbestos content of thermal systems insulation, surfacing material, and other presumed ACM or miscellaneous suspect ACM containing 10% vermiculite or less may be determined using ELAP Certification Manual Item 198.1. Where the same material contains greater than 10% vermiculite, Item 198.6 may be used to evaluate its asbestos content; however, any test results must be reported with the following disclaimer: "This method does not remove vermiculite and may underestimate the level of asbestos present in a sample containing greater than 10% vermiculite." Other materials (attic fill, block fill or other loose bulk vermiculite materials) must be designated and treated as ACM. DOH is currently working to review and approve new testing methodologies that can identify the presence of asbestos when vermiculite is present. The guidance letter can be found on the Business Council of New York State's website at: www.bcnys.org/inside/env/2013/0709update.html#guiidance.

Implications: The guidance is potentially of interest to individuals engaged in asbestos removal activities.

OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: The Occupational Safety and Health Administration (OSHA) issued a **direct final rule updating its general industry and construction signage standards** by adding references to the latest versions of the American National Standards Institute standards for accident prevention signs and tags. The rulemaking is part of OSHA's ongoing effort to update its standards to incorporate the latest versions of national consensus and industry standards. With this rulemaking, OSHA added new signage standards to the following existing rules: (1) general industry standard on nonionizing radiation; (2) general industry standard on

specifications for accident-prevention signs and tags at 29 CFR § 1910.145; (3) general industry standard for pulp, paper, and paperboard mills; and (4) construction standard on accident prevention signs and tags at 29 CFR § 1926.200. Regulated entities will be able to comply with either the existing or updated signage standards. The direct final rule will take effect September 11, 2013 unless OSHA receives significant adverse comments by July 15, 2013. The direct final rule can be found in the June 13, 2013 Federal Register at: www.gpo.gov/fdsys.

Implications: The rule is potentially of interest to facilities subject to the signage requirements identified above.

FEDERAL: OSHA **announced a new National Emphasis Program (NEP) to protect workers from occupational exposure to isocyanates**, a group of chemicals that can cause occupational asthma, irritation of the skin, eyes, nose and throat, and cancer. Isocyanates are commonly used in the manufacture of flexible and rigid foams, fibers, coatings, elasatomers, and spray-on polyurethane. The NEP outlines OSHA's process for identifying and inspecting facilities in general industry, construction and maritime industries where exposures to isocyanates are known or likely to occur. Steps include: (1) identifying facilities for inspection, working from a list of SIC/NAICS codes that distinguishes between primary sectors (industries where isocyanate overexposures are known to occur) and secondary sectors (industries where overexposures are possible but not documented); (2) developing a master list of sites for inspection; (3) inspection scheduling; (4) complaints and referrals; (5) inspection procedure (opening conference, review of industry/illness records, evaluating the employer's engineering controls, administrative and work practice controls and personal protective equipment, including air and wipe sampling, hazard communication, housekeeping, and flammable and combustible products); (6) preparation of a hazard assessment letter and follow-up; and (7) agency outreach. The NEP directive can be found on the OSHA website at: www.osha.gov/OshDoc/Directive_pdf/CPL_03-00-017.pdf.

Implications: Products containing isocyanates are used in a wide variety of industries. See Appendix A of the NEP for industries where isocyanate exposures are known or likely to occur. OSHA will use this list to develop its master list for NEP inspections.

Other Recent Developments (Proposed)

AIR

FEDERAL: EPA proposed **regulations for states implementing the 2008 ozone national ambient air quality standards** (NAAQS). In 2008, EPA lowered the primary and secondary 8-hour ozone NAAQS from 0.08 to 0.075 ppm following a contentious review process. Although the Obama administration EPA reopened that process, the President ultimately decided to wait until completion of the next formal NAAQS review before deciding whether to lower the standard further. EPA designated nonattainment areas under the 0.075 ozone NAAQS in May 2012 and recently proposed a rule summarizing the requirements for states implementing the standard. Among other things, the rule addresses: (1) the deadlines for submitting nonattainment area state implementation plan (SIP) elements; (2) whether states can rely on federal ozone control measures to demonstrate compliance with the NAAQS; (3) the modeling required

to demonstrate attainment; (4) the procedure for obtaining credit for emission reductions associated with innovative or creative approaches such as energy efficiency, renewable energy, land use planning, and travel efficiency; (5) requirements for demonstrating reasonable further progress, including a proposal to allow the substitution of NOx reductions for volatile organic compound reductions in certain situations; (6) reasonably available control technology and reasonably available control measure requirements; (7) transportation and general conformity; (8) contingency measures required in the event an area fails to meet a milestone or achieve attainment; (9) application of new source review requirements; (10) emission inventory and emission statement requirements; and (11) allowing states to combine SIP submittals to reduce administrative burdens. EPA is accepting comments on the proposed rule until **August 5, 2013**; it can be found in the June 6, 2013 Federal Register at: www.gpo.gov/fdsys.

Implications: EPA has designated the New York City metropolitan area and Chautauqua County as marginal nonattainment under the 2008 8-hour ozone NAAQS. The proposed rule contains the principles DEC must following in developing a SIP for these areas.

WATER

NEW YORK STATE: DEC is **compiling data to assist it in developing a list of impaired surface waters as required under Section 303(d) of the Clean Water Act**. DEC assesses waters in two or three of the state's 17 drainage basins each year, ensuring the reassessment of water quality for the entire state every five years. This information is used to identify waters that do not support their designated uses and so require possible development of a total maximum daily load (TMDL) plan. With this notice, DEC is requesting data from the public to assist it in conducting its water quality assessment. Submissions should be accompanied by a completed Waterbody Inventory/Priority Waterbodies List Assessment Worksheet. The deadline for submitting data is **September 30, 2013**. Information about the assessment process, including the WI/PWL worksheet, can found on DEC's website at: www.dec.ny.gov/chemical/23846.html.

Implications: The collected data will be used to identify waters that require TMDLs. The establishment of a TMDL frequently leads to the imposition of stricter discharge limits on facilities.

CHEMICAL

FEDERAL: EPA is **proposing to add a nonylphenol category to the list of toxic chemicals subject to reporting under the Toxic Release Inventory** (TRI) program. Under TRI, certain facilities that manufacture, process or otherwise use listed toxic chemicals in amounts above specific thresholds must report their environmental releases and other waste management activities to EPA annually. These facilities also must report pollution prevention and recycling data for such chemicals. Nonylphenol is used in the manufacture of nonylphenol ethoxylates, which are nonionic surfactants used in a wide variety of industrial applications and consumer products. According to EPA, nonylphenol is persistent in the aquatic environment, moderately bioaccumulative, and extremely toxic to aquatic organisms, justifying its inclusion on the TRI list. Because there is no one Chemical Abstract Service (CAS) number that describes

nonylphenol, EPA is proposing to add it to the TRI list as a category defined by a structure. EPA is accepting comments on the proposal until **August 19, 2013**; it can be found in the June 20, 2013 Federal Register at: www.gpo.gov/fdsys.

Implications: The proposal is potentially of interest to a wide variety of industries that manufacture, process or otherwise use nonylphenol.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

July 23, 2013: Deadline for submitting comments on EPA's proposed revisions to the NSPS for kraft pulp mills (extended from July 8, 2013). See the May 23, 2013 Federal Register at www.gpo.gov/fdsys for details.

July 26, 2013: Deadline for submitting comments on DEC's draft Program Policy DAR-20, *Economic and Technical Analysis for Reasonably Available Control Technology (RACT).* See DEC's website at www.dec.ny.gov/chemical/91851.html for details.

August 5, 2013: Deadline for submitting comments on EPA's proposed regulations implementing the 2008 ozone NAAQS. See the June 6, 2013 Federal Register at www.gpo.gov/fdsys for details.

August 9, 2013: Deadline for submitting comments on EPA's proposed rules implementing emission standards for formaldehyde from composite wood products. See the June 10, 2013 Federal Register at www.gpo.gov/fdsys for details.

August 19, 2013: Deadline for submitting comments on EPA's proposal to add nonylphenol to the list of chemicals subject to TRI reporting. See the June 20, 2013 Federal Register at www.gpo.gov/fdsys for details.

August 26, 2013: New deadline for submitting comments on EPA's proposed revisions to the NSPS and NESHAPs for electric generating units relating to emissions during startup and shutdown. See the June 25, 2013 Federal Register at www.gpo.gov/fdsys for details on reopening of the public comment period.

August 26, 2013: Public hearing on DEC's proposed revisions to its CO_2 budget trading program regulations scheduled for 2:00 p.m. at DEC Headquarters, 625 Broadway, Albany. Additional public hearings are scheduled later in the week at DEC offices in Avon and Long Island City.

September 9, 2013: Deadline for submitting comments on DEC's proposed revisions to its CO_2 budget trading regulations required to implement recent changes to the RGGI cap-and-trade program for CO_2 emissions from power plants. See DEC's website at www.dec.ny.gov/regulations/propregulations.html for details.

September 20, 2013: Deadline for submitting comments on EPA's proposed effluent limitation guidelines and standards for the steam electric power generating point source category (extended from August 6, 2013). See the June 7, 2013 Federal Register at www.gpo.gov/fdsys for details.

September 30, 2013: Deadline for submitting data in conjunction with DEC's development of its list of impaired waters under CWA § 303(d). Information about the assessment process can be found on DEC's website at www.dec.ny.gov/chemical/23846.html.