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ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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Final Statutes, Rulemakings, Guidance and Cases



Citation	Summary	Implications	Schedule/Notes	
BULK STORAGE				
NEW YORK STATE Revisions to Petroleum Bulk Storage Regulations 6 NYCRR Part 613	DEC revised the petroleum bulk storage (PBS) regulations to incorporate changes required by the 2005 Energy Policy Act (EPAct) and 2008 revisions to New York's PBS statute and minimize inconsistencies between state and federal requirements for underground storage tanks (USTs). Major changes include: • Deleting Parts 612 and 614, consolidating the PBS requirements into Part 613, and establishing separate subparts for UST systems regulated by both EPA and DEC, UST systems regulated only by DEC, and aboveground storage tanks (ASTs). • Conforming the definition of "facility" to the 2008 statute by adding certain USTs larger than 110 gallons and specifying that the term refers to the property on which the tanks are located not the actual tanks. DEC also revised the definition of facility to exclude operational and temporary tanks from regulation. • Conforming the definition of "petroleum" to the 2008 statute and adding the term "petroleum mixture" to clarify when petroleum mixtures are regulated and under what program. • Adopting the federal definition of UST such that partially-buried tanks with 10% or more volume beneath the surface are regulated as USTs not ASTs. • Clarifying that property owners are responsible for tank registration. • Introducing terminology to distinguish among tank systems by age. • Requiring owners of federally regulated USTs to comply with new operator training requirements that differ depending on the individual's role in managing the tanks (general or day-to-day oversight versus emergency response only). • Implementing statutory provisions barring delivery of petroleum to certain leaking or otherwise inadequate tank systems and establishing a system for "red tagging" tanks. • Incorporating DEC's existing de minimis oil spill reporting policy into the rules (no reporting required for spills of less than 5 gallons that are contained/controlled and cleaned up within 2 hours of discovery). The revisions to the PBS regulations can be found on DEC's website at: www.dec.ny.gov/regulati	The revisions are primarily of interest to owners/operators of PBS tank systems and owners of property on which PBS tanks are located. The revisions represent the first major overhaul of the PBS regulations in almost 30 years. Many of the changes—most notably the training and delivery prohibition requirements—are mandated by the 2005 EPAct. Changes to the definition of facility and petroleum are required to implement the 2008 amendments to New York's PBS statute. Other changes address long-standing problems with the regulation and/or are intended to improve consistency between the state and federal UST standards.	The revised rule will take effect October 11, 2015. A second set of revisions will be necessary to incorporate changes to the federal UST regulations adopted earlier this year. DEC also revised the chemical bulk storage (CBS) regulations as part of this rulemaking. However, only part of the rules are currently available on DEC's website. A summary of the CBS revisions will appear in next month's regulatory summary. DEC made various changes to the PBS regulations following the public comment period, including: (1) deleting a table identifying all PBS recordkeeping requirements; (2) adding a definition of underground piping; (3) clarifying the secondary containment requirements for ASTs; and (4) clarifying the tank lining requirements. In addition, the Responsiveness Summary clarified that DEC may allow more than one registration for a site under certain circumstances and that owners may authorize others to register tanks on their behalf.	



Proposed Statutes, Rulemakings and Guidance

Citation	Summary	Implications	Schedules/Notes	
AIR/CLIMATE CHANGE				
AIR/CLIMATE CHANGE EDERAL New Source Performance Standards for Oil and Natural Gas Sector and Related Rules 40 CFR Parts 50, 51, 60 et al. 80 Fed. Reg. 56593 (oil and natural gas sector NSPS); 80 Fed. Reg. 56577 (oil and natural gas industry control techniques guidelines); 80 Fed. Reg. 56579 (source determination) (Sept. 18, 2015)	EPA proposed a series of rules to limit emissions of volatile organic compounds (VOCs) and methane from certain oil and natural gas production, transmission and distribution sources. The proposals establish standards for new, modified and reconstructed oil and natural gas sources, set guidelines for existing sources in states with ozone nonattainment problems, and define "source" for the oil and natural gas sector. • New Source Performance Standards (NSPS). EPA proposed to revise 40 CFR Part 60, subpart OOOO, to establish standards for methane and VOC emissions from certain new, modified and reconstructed equipment, processes and activities in the oil and natural gas source category, including those: (i) not covered by the current NSPS; (ii) regulated under the NSPS for VOCs only and not methane; and/or (iii) currently limited to subsets of certain equipment. According to EPA, the best system of emission reduction required to regulate VOCs will also address methane. Equipment covered by the proposed rule includes compressors, pneumatic controllers, pneumatic pumps, hydraulically fractured well completions, and fugitive emissions from well sites and compressor stations. EPA also is granting reconsideration on various issues relating to the 2012 revisions to the NSPS. • Control Techniques Guidelines (CTG). Rather than set emission guidelines for existing sources in this category, EPA has proposed a CTG. States with moderate or higher ozone nonattainment areas or that are located in the Northeast Ozone Transport region must review the CTG and decide whether to use it for developing reasonably available control technology (RACT) standards for sources in the sector or develop their own RACT standards. • Source Determination. In the wake of a court of appeals decision rejecting EPA's conclusion that it may consider proximity in deciding whether sources are part of a single facility for Title V and New Source Review purposes, EPA proposed two alternatives for making source determinations for oil and gas activities.	The rules are primarily of interest to entities engaged in oil and natural gas production, transmission and distribution. EPA issued a revised NSPS in 2012 that updated the VOC standards for equipment leaks at onshore natural gas processing plants and established standards for oil and gas activities/equipment not covered by the standard, including gas well completions, certain compressors, natural gasoperated pneumatic controllers, and storage vessels. The rule, which was revised in 2013 and 2014, has been the subject of significant controversy, much of it focused on EPA's failure to regulate methane from oil and natural gas production, transmission and distribution activities. The NSPS was proposed as part of the Obama administration's Strategy to Reduce Methane Emissions, which was published in March 2014. The strategy focuses on reducing methane emissions from the four major sources of human-related methane: landfills, coal mining, agriculture, and oil and gas.	EPA is accepting comments on the proposed NSPS, CTG and source determination until November 17, 2015.	



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HAZARDOUS WASTE		· <u>-</u>	
FEDERAL Hazardous Waste Generator Improvements 40 CFR Parts 260, 261, 262, et al. 80 Fed. Reg. 57918 (Sept. 25, 2015)	EPA proposed major revisions to the hazardous waste generator and related regulations to simplify and improve compliance and address gaps in the regulations. These changes include revising key definitions, reorganizing the rule to make it more user friendly, providing greater flexibility in relation to certain hazardous waste management activities, and making technical corrections and conforming changes. Key revisions include: • Relocating all generator requirements to 40 CFR Part 262. • Replacing the term "conditionally exempt small quantity generator" (CESQG) with "very small quantity generator" (VSQG), revising the definition of small quantity generator (SQG), and adding definitions of large quantity generator (LQG), central accumulation area, acute hazardous waste and non-acute hazardous waste. • Clarifying how mixtures of non-hazardous and hazardous waste affect the generator status of SQGs and CESQGs. • Improving flexibility by: allowing CESQGs to send hazardous waste to LQG facilities under their control provided certain conditions are met; and addressing "episodic generation" by allowing facilities to exceed their generator threshold once per year. • Requiring biennial reporting for owners/operators of facilities that recycle hazardous waste but do not store it before recycling. • Revising the hazardous waste determination provisions to specify the types of information that may be considered to characterize waste using generator knowledge and clarify what records must be kept. • Requiring SQGs and LQGs to renotify EPA every two years to ensure the information on file is current. • Clarifying the distinction between independent requirements (requirements that apply regardless of generator status) and conditions for exemption (requirements that must be met to satisfy a particular exemption). • Revising waste accumulation labeling/marking rules. • Updating preparedness/prevention requirements for SQGs and LQGs. • Allowing facilities to apply for a waiver from the local fire department if they ca	The proposed revisions are potentially of interest to any facility that generates hazardous waste, including CESQGs. The rule represents the first major overhaul of the hazardous waste generator requirements in several decades. Many of these issues were identified in a 2004 evaluation of the hazardous waste program conducted by EPA as well as during a 2013 evaluation of hazardous waste determinations and a notice of data availability relating to the management of hazardous waste in the retail sector. Authorized states such as New York will be required to adopt those provisions of the regulations that are more stringent than the equivalent state regulations. However, states are not required to adopt those provisions of the rule that are less stringent than their federal counterparts.	EPA is accepting comment on the proposed revisions until November 24, 2015. EPA plans to finalize the rule in 2016.



Citation	Summary	Implications	Schedule/Notes
HAZARDOUS WASTE			
FEDERAL Management Standards for Hazardous Waste Pharmaceuticals 40 CFR Parts 261, 262, 266, et al. 80 Fed. Reg. 58014 (Sept. 25, 2015)	EPA proposed a new program to handle hazardous waste pharmaceuticals at healthcare facilities and pharmaceutical reverse distributors. The new program, which will be set forth at 40 CFR Part 266, subpart P, would be mandatory for all healthcare facilities that are currently SQGs and LQGs and all reverse pharmaceutical distributors, regardless of generator category. Key provisions include: • New definitions, including pharmaceutical and health care facility, among many others. • Special management requirements for non-creditable pharmaceuticals (i.e., pharmaceuticals not expected to be eligible for manufacturer credit), including EPA notification, personnel training, hazardous waste determination, container and labeling requirements, accumulation time limits, land disposal restrictions, procedures for shipping non-creditable hazardous waste, and others. • Minimal requirements for healthcare facilities accumulating potentially creditable hazardous waste pharmaceuticals prior to shipment to a pharmaceutical reverse distributor (i.e., an entity that evaluates returned pharmaceuticals to determine whether they can be credited by the manufacturer or must be disposed). • Shipping standards for hazardous waste pharmaceuticals, including proposal to allow shipment of potentially creditable hazardous waste pharmaceuticals without a hazardous waste manifest and without the use of hazardous waste transporters. • Ban on disposing of pharmaceuticals in the sewer (i.e., by flushing). • Conditional exemption from the hazardous waste regulations for pharmaceuticals that are both a hazardous waste and a controlled substance regulated by the Drug Enforcement Administration as well as special rules for hazardous waste pharmaceuticals that are also regulated medical waste or that contain a radioactive component. Non-pharmaceutical hazardous wastes at healthcare facilities would continue to be regulated under the existing hazardous waste regulations. Non-hazardous waste pharmaceuticals or segregated out for disposal. CESQG gen	The regulation would apply to all healthcare facilities, a term which includes hospitals, doctor's offices, ambulatory surgical centers, clinics, long-term care facilities, ambulance services, pharmacies and other similar facilities. EPA is accepting comment on whether long-term care facilities should be considered healthcare facilities or households. According to EPA, the new rules are necessary to address several unique problems associated with managing pharmaceutical waste, including that: (1) such wastes often are generated unpredictably, in small quantities, by different employees across a facility; (2) the workers generating the wastes lack expertise in making waste determinations; (3) the facility may have thousands of items in its formulary that may vary over time and that come in many different forms, complicating waste determination and management; and (4) several waste pharmaceuticals are acute hazardous wastes when disposed.	EPA is accepting comments on the proposed rule until November 24, 2015. The rule follows a 2008 proposal to add hazardous waste pharmaceuticals to the universal waste program as well as a more recent Notice of Data Availability focusing on the unique issues faced by retailers concerning hazardous waste management.



Other Recent Developments (Final)

WATER

NEW YORK STATE: DEC made its **revised Environmental Benefit Permit Strategy** (**EBPS**) **rankings available for review**. The EBPS rankings prioritize State Pollutant Discharge Elimination System (SPDES) permits for full technical review based on criteria outlined in DEC guidance. The review under the EBPS program occurs independent of routine SPDES permit renewals. Each year, DEC publishes the priority list for central office, which handles most major industrial SPDES permits, and for each DEC regional office. SPDES permits on the top 10 percent of the lists are scheduled for full technical review in the coming year. Any interested party may submit a request to change a facility's ranking. The 2015 rankings can be found on DEC's website at: www.dec.ny.gov/docs/water_pdf/ebps2015.pdf.

Implications: The notice is potentially of interest to anyone with an individual SPDES permit.

Other Recent Developments (Proposed)

AIR

NEW YORK STATE: DEC is proposing to replace its existing rules implementing the federal Clean Air Interstate Rule (CAIR) with regulations implementing the Cross-State Air Pollution Rule (CSAPR), which was upheld by the U.S. Supreme Court following a prolonged legal battle. The CSAPR establishes a comprehensive cap-and-trade program covering more than two dozen states to limit emissions of nitrogen oxides (NOx) and sulfur dioxide (SO₂) in order to address ongoing ozone and fine particulate matter nonattainment problems, primarily in the Northeast. With this rulemaking, DEC is repealing 6 NYCRR Parts 243, 244, and 245, which were adopted to implement the CAIR, and replacing them with similar rules implementing the CSAPR as follows: Part 243: Transport Rule NOx Ozone Season Trading Program; Part 244: Transport Rule NOx Annual Trading Program; and Part 245: SO₂ Group I Trading Program. The rules, which apply to fossil fuel-fired power plants with a nameplate capacity of 25 megawatt or greater that sell electricity: (1) incorporate the ozone season NOx, annual NOx, and SO₂ budgets adopted by EPA for New York under the CSAPR; (2) allocate 5% of that budget to a new unit set-aside account; (3) proportionally allocate allowances to existing units based on the three-year average emissions of all units subject to the CSAPR; and (4) place the remaining allowances in an Energy Efficiency and Renewable Energy Technology account with the proceeds from sale of the allowances to be used by the New York State Energy Research and Development Authority to fund energy efficiency and renewable energy projects. A public hearing on the proposed rules is scheduled for October 19, 2015 at DEC Headquarters in Albany; comments on the proposed rules must be submitted by October 24, 2015. The proposed rules can be found on DEC's website at: www.dec.ny.gov/regulations/103194.html.

<u>Implications</u>: The proposed rules are primarily of interest to owners/operators of fossil fuel-fired power plants.



WATER

NEW YORK STATE: DEC is seeking comment on proposed modifications to its SPDES General Permit for Stormwater Discharges from Municipal Separate Storm Sewer Systems (MS4s). Under the MS4 general permit, operators of small MS4s in urbanized areas must develop and implement a stormwater management program (SWMP) and obtain coverage under the general permit. The SWMP must fulfill six required program components relating to public education and outreach, public involvement and participation, illicit discharge detection and elimination, construction site stormwater runoff control, post-construction stormwater management, and pollution prevention/good housekeeping for municipal operations. With the proposal, DEC is seeking comment on planned revisions establishing a schedule for entities in watersheds covered by specific Total Maximum Daily Loads to develop and implement certain best management practices (BMPs). The changes are needed to implement the Westchester County Supreme Court's decision in *Natural Resources Defense Council v. DEC*. Although New York's highest court ultimately upheld the MS4 general permit against various challenges, DEC never appealed the portion of the trial court decision which held that DEC "failed to specify compliance schedules with respect to effluent limitations and water quality standards." To implement the trial court's decision, the revised MS4 permit contains compliance schedules as well as a progress report form seeking information on the municipalities' progress in implementing required BMPs. DEC is accepting comments on the proposed revisions until October 16, 2015; the revised MS4 general permit and related documents can be found at: www.dec.ny.gov/chemical/41392.html.

<u>Implications</u>: The revised general permit is primarily of interest to municipalities that discharge to certain impaired watersheds, including, but not limited to, the New York City reservoirs located east of the Hudson River, Greenwood Lake in Orange County, Onondaga Lake, and Long Island.

OTHER

FEDERAL: EPA is accepting comments and recommendations on its **national enforcement initiatives (NEI) for fiscal years 2017-2019**. EPA selects these initiatives every three year to focus its enforcement resources on the most important environmental problems. With the current notice, EPA is seeking comment on whether it should continue its existing enforcement initiatives and/or focus on new areas. The current NEI, which covers fiscal years 2014-2016 includes six initiatives: (1) reducing air pollution from the largest sources (addressing emissions relating to large new/modified sources, including coal-fired power plants and acid, glass and cement manufacturing facilities); (2) cutting toxic pollution (focusing on illegal emissions of hazardous air pollutants from leaks, flares and other industrial sources); (3) ensuring energy extraction and production activities comply with environmental laws; (4) reducing pollution from mineral processing operations; (5) keeping raw sewage and contaminated stormwater out of the nation's waters; and (6) preventing animal waste from contaminating surface and groundwater supplies. In addition to the current initiatives, EPA is seeking comment on whether to focus on the following areas: (1) protecting communities from exposure to toxic emissions (with a focus on organic liquid storage tanks and air emissions from facilities handling hazardous waste); (2) keeping industrial pollutants out of the



nation's waters (with a focus on mining, chemical manufacturing, food processing, and primary metals manufacturing); and (3) reducing the risks and impacts of industrial accidents and releases. Per EPA, it intends to incorporate "Next Generation Compliance" approaches into its work, which includes measures such as up-to-date (and real time) monitoring techniques, data analytics, and transparency. EPA is accepting comments on the NEI options until **October 14, 2015**; the notice can be found in September 15, 2015 Federal Register at: www.gpo.gov/fdsys.

<u>Implications</u>: Although the NEI tends to focus on larger facilities/polluters, it is generally of interest to anyone regulated by EPA either directly or through a state-delegated program such as the Clean Air or Clean Water Acts.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

October 9, 2015: Deadline for submitting information in response to OSHA's RFI on alternative approaches to workplace chemical management, including possible updating of permissible exposure limits (extended from April 8, 2015). See the October 10, 2014 Federal Register at www.gpo.gov/fdsys for details.

October 14, 2015: Deadline for submitting comments on EPA's recommendations on national enforcement initiatives for fiscal years 2017-2019. See the September 15, 2015 Federal Register at www.gpo.gov/fdsys for details.

October 16, 2015: Deadline for submitting comments on DEC's proposed modifications to the MS4 General Permit required to implement special requirements for MS4s discharging to certain impaired water bodies. See DEC's website at www.dec.ny.gov/chemical/41392.html for details.

October 19, 2015: Public hearing on DEC's proposed regulations implementing the Cross-State Air Pollution Rule emission trading program for fossil fuel-fired electric generating units scheduled for 5:00 p.m. at DEC Headquarters, 625 Broadway, Albany.

October 24, 2015: Deadline for submitting comments on DEC's proposed regulations implementing the Cross-State Air Pollution Rule emission trading program for fossil fuel-fired electric generating units. See DEC's website at www.dec.ny.gov/regulations/103194.html for details.

October 26, 2015: Deadline for submitting comments on EPA's proposed revisions to the emission guidelines for existing municipal solid waste landfills and its supplemental proposal for changes to the standards for new/modified landfills. See the August 27, 2015 Federal Register at www.gpo.gov/fdsys for details.



October 28, 2015: Deadline for submitting comments on OSHA's proposed revisions to its injury/illness recordkeeping requirements (extended from September 28, 2015). See the July 29, 2015 Federal Register at www.gpo.gov/fdsys for details.

October 31, 2015: Deadline for submitting application to enroll in DEC's New York Environmental Leaders program. Information on the program can be found at www.dec.ny.gov/chemical/939.html.

November 5, 2015: Deadline for submitting comments on OSHA's proposed update to its beryllium standards. See the August 7, 2015 Federal Register at www.gpo.gov/fdsys for details.

November 17, 2015: Deadline for submitting comments relating to EPA's proposals to regulate VOC and methane emissions from oil and natural gas production sources, including a proposed NSPS (for new, modified and reconstructed sources), CTG (providing guidance to states developing RACT for existing sources), and proposed source determination rule (defining when sources may be considered together for purposes of Title V and New Source Review). See the September 18, 2015 Federal Register at www.gpo.gov/fdsys for details.

November 24, 2015: Deadline for submitting comments on EPA's proposed improvements to the hazardous waste generator requirements and new management standards for hazardous waste pharmaceuticals. See the September 25, 2015 Federal Register at www.gpo.gov/fdsys for details.