

# Young / Sommer LLC

## ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

**November 6, 2015**

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Final Statutes, Rulemakings, Guidance and Cases

| Citation  | Summary  | Implications  | Schedule/Notes   |
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| <b>AIR</b>  |  |   |  |
| <p>FEDERAL<br/> <b>Revised Ozone National Ambient Air Quality Standards</b><br/>                     40 CFR Parts 50-53 and 58<br/>                     80 Fed. Reg. 65292<br/>                     (Oct. 26, 2015)</p> | <p>EPA lowered the 8-hour national ambient air quality standards (NAAQS) for ozone from 75 parts per billion (ppb) to 70 ppb after concluding that the reduction is necessary to protect public health with an adequate margin of safety. An area will meet the standards if the fourth-highest daily 8-hour ozone concentration per year, averaged over three years, is equal to or less than 70 ppb. The Clean Air Scientific Advisory Committee, which is charged with reviewing the NAAQS, previously concluded that the scientific evidence supports a standard within a range of 60 to 70 ppb. As part of the rulemaking, EPA also:</p> <ul style="list-style-type: none"> <li>• Adopted a secondary (welfare-based) standard that is identical to the primary health-based standard after concluding that the revised standard would protect plants and trees from the cumulative exposure to excess ozone during the growing season. In so doing, EPA declined to adopt a standard based on the so-called W126 index, a seasonal measure used to assess the impact of ozone on ecosystems and vegetation.</li> <li>• Changed the ozone monitoring requirements, including extending the ozone monitoring season in certain states to match the time of year when data shows unhealthy ozone levels and streamlining and modernizing the photochemical assessment monitoring stations (PAMS) network. The extensions increase the length of the ozone season by one to seven months, depending on the state.</li> <li>• Updated the Air Quality Index, EPA’s color-coded tool for communicating air quality to the public, to reflect changes to the health-based ozone standard.</li> </ul> <p>The rule can be found in the October 26, 2015 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>. Additional information about the ozone NAAQS revision can be found at: <a href="http://www3.epa.gov/airquality/ozonepollution/actions.html">www3.epa.gov/airquality/ozonepollution/actions.html</a>.</p> | <p>Ozone data from 2012-2014 show that the New York City metropolitan area, and Erie and Chautauqua counties exceeded the new 70 ppb ozone standard. According to EPA, the “vast majority” of U.S. counties with ozone monitors will meet the standards by 2025 with programs now in place or underway, such as the Tier 3 vehicle emission standards, Clean Power Plan and regional haze rules. In the past, however, New York and other states with ozone nonattainment problems have needed to impose stricter state standards on sources of nitrogen oxides and volatile organic compounds to address ozone nonattainment problems.</p> | <p>The final rule takes effect December 28, 2015.</p> <p>State recommendations for area designations must be submitted within 12 months of promulgating standards, i.e., by October 1, 2016. EPA must issue final area designations one year later. EPA plans to publish rules and guidance to assist areas with implementing the revised NAAQS by October 26, 2016. These rules/guidance will address such issues as area classification, attainment dates, and attainment plan requirements.</p> |

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| <b>CLIMATE CHANGE</b>   |   |   |   |
| <p>FEDERAL<br/> <b>Guidelines for Greenhouse Gas Emissions from Existing Power Plants</b><br/>           40 CFR Part 60, subpart UUUU<br/>           80 Fed. Reg. 64662 (Oct. 23, 2015)</p> | <p>More than two months after announcing the rule, EPA <b>published its Clean Power Plan (CPP)</b>, a complex regulatory scheme designed to reduce carbon dioxide (CO<sub>2</sub>) emissions from existing power plants 32% from 2005 levels by 2030. EPA is adopting the CPP under Clean Air Act (CAA) § 111(d), 42 USC § 7411(d), which requires EPA to set emission guidelines for any pollutant regulated under a New Source Performance Standard (NSPS) that is not a “criteria pollutant.” To achieve the overall CPP goal, EPA set CO<sub>2</sub> emission performance rates for two categories of fossil fuel-fired electric generating units (EGUs)—coal-and oil-fired power plants and natural gas-fired combined cycle generating units. In setting these standards, EPA determined the ranges of reductions that can be achieved by applying the following three “building blocks:” (1) reducing the carbon intensity of generation at individual units through heat rate improvements; (2) substituting less carbon-intensive generating units (e.g., replacing coal with natural gas); and (3) increasing reliance on low or zero-carbon generation sources (such as solar and wind). EPA applied each of the three building blocks to all of the coal plants and natural gas plants in each of three interconnected regional grids to determine the regional performance rate for each category and selected the most achievable rate to arrive at the standards. These CO<sub>2</sub> emission rates were then applied to all affected sources to arrive at state-specific goals.</p> <p>The required reductions must be achieved through development of state-specific plans designed to achieve interim and final goals using a rate-based (pounds of CO<sub>2</sub> per megawatt hour) or mass-based (total short-tons of CO<sub>2</sub>) approach. States must develop one of two types of plans to achieve the necessary reductions: an emission standards plan that requires affected power plants to implement source-specific requirements to ensure that all plants meet their required emission performance goals or a state measures plan that may include a mixture of measures, including renewable energy standards, residential energy efficiency programs, and multi-state emission trading.</p> <p>Information about the CPP can be found on EPA’s website at: <a href="http://www2.epa.gov/cleanpowerplan">www2.epa.gov/cleanpowerplan</a>.</p> | <p>The CPP is being touted by the Obama administration as a major step toward reducing emissions that contribute to global climate change. The rule received strong support from environmentalists and certain states; opposition has come from business interests and other states, including those with large numbers of coal-fired power plants and/or coal mines.</p> <p>EPA significantly revised the rule in response to the more than 4.3 million comments received. Changes include: (1) establishing source category-specific emission performance rates; (2) selecting the rates using information on regionwide emissions associated with each of the three “building blocks;” (3) allowing states to select either rate or mass-based goals for demonstrating CPP compliance; (4) eliminating demand-side energy efficiency as a “building block” while allowing states to consider such programs when demonstrating compliance with their emission-reduction goals; and (5) adding provisions to address reliability concerns and facilitate emission trading.</p> | <p>The rule takes effect December 22, 2015.</p> <p>States must submit final plans or an initial submittal with an extension request by September 6, 2016. Final complete plans must be submitted no later than September 6, 2018. The plan must show that the state will achieve its CO<sub>2</sub> emission reduction goals by 2030. In response to comments, EPA has established several interim deadlines for states to demonstrate that they are achieving the emission reductions necessary to meet their final CO<sub>2</sub> reduction goal.</p> <p>In light of significant state opposition to the program, EPA has proposed a federal implementation plan (FIP), which will be used by EPA to ensure compliance in states that decline to submit plans under the CPP. 80 Fed. Reg. 64966 (Oct. 23, 2015). EPA is accepting comments on the proposed FIP until <b>January 21, 2016</b>.</p> |

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| <b>CLIMATE CHANGE</b>  |   |   |   |
| <p>FEDERAL<br/> <b>GHG Emission Standards for New, Reconstructed and Modified Power Plants</b><br/>           40 CFR Part 60, subpart TTTT, et al.<br/>           80 Fed. Reg. 64510 (Oct. 23, 2015)</p> | <p>The same day EPA issued the Clean Power Plan regulations for existing fossil fuel-fired electric generating units, the agency also published final <b>New Source Performance Standards for new, modified and reconstructed units</b> in accordance with CAA § 111(b), 42 USC § 7411(b). The rule applies to stationary combustion turbines (generally firing natural gas) and electric utility steam generating units (generally firing coal) and contains the following standards:</p> <ul style="list-style-type: none"> <li>• <i>New and reconstructed natural gas units.</i> Under the final regulation, the best system of emission reduction (BSER) for these units is natural gas combined cycle technology. The rule imposes a CO<sub>2</sub> emission limit of 1,000 pounds of CO<sub>2</sub> per megawatt hour on a gross output basis (lbs CO<sub>2</sub>/MWh-gross) regardless of unit size for baseload units; non-baseload and multi-fuel-fired units must meet a clean fuels input-based standard.</li> <li>• <i>Modified natural gas units.</i> EPA declined to set CO<sub>2</sub> emission limits for modified natural gas units after concluding that it needed additional information before setting standards.</li> <li>• <i>New coal-fired power plants.</i> EPA set a CO<sub>2</sub> emission limit of 1,400 lbs CO<sub>2</sub>/MWh-gross, which can be achieved by new highly efficient supercritical pulverized coal units with carbon capture and storage (CCS) capturing about 20% of the unit’s carbon pollution.</li> <li>• <i>Modified coal-fired power plants.</i> EPA will set limits for modified units based on each unit’s own best potential performance. These limits will apply to modifications resulting in an increase in hourly CO<sub>2</sub> emissions of more than 10% relative to the emissions of the five most recent years from the unit. Smaller modifications will not trigger the NSPS.</li> <li>• <i>Reconstructed coal-fired power plants.</i> Units with a heat input greater than 2,000 million British thermal units per hour must meet a CO<sub>2</sub> emission limit of 1,800 lbs CO<sub>2</sub>/MWh-gross (2,000 lbs CO<sub>2</sub>/MWh-gross for smaller reconstructed units).</li> </ul> <p>Information about the NSPS can be found at:<br/> <a href="http://www2.epa.gov/cleanpowerplan">www2.epa.gov/cleanpowerplan</a>.</p> | <p>The rule, which is primarily of interest to owners/operators of power plants, has been significantly revised since proposal. Major changes include: (1) establishing separate emission limits for baseload and non-baseload new and reconstructed natural gas-fired units; (2) postponing adoption of emission limits for modified natural gas units; (3) increasing the emission limit for new coal-fired power plants; (4) increasing the emission limits for reconstructed coal-fired power plants; and (5) declining to regulate smaller modifications at coal-fired power plants. Although the final standards are less rigorous than those proposed, EPA is continuing to rely on CCS for new coal-fired units; business has objected from the outset that CCS is an experimental technology and thus not a proper basis for BSER.</p> | <p>The final rule took effect October 23, 2015.</p> |

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| <b>BULK STORAGE</b>   |   |   |   |
| <p>NEW YORK STATE<br/> <b>Revisions to Chemical Bulk Storage Regulations</b><br/>                     6 NYCRR Parts 596-599</p> | <p>DEC revised the chemical bulk storage (CBS) regulations to incorporate changes required by the 2005 Energy Policy Act and 2008 revisions to New York’s hazardous substance bulk storage statute and minimize inconsistencies between the state and federal requirements for underground storage tanks (USTs). Major changes include:</p> <ul style="list-style-type: none"> <li>• Deleting Part 595, Releases of Hazardous Substances, and relocating the spill reporting requirements to Parts 596 and 597.</li> <li>• Redefining “hazardous substance” to clarify how mixtures containing listed hazardous substances are regulated and better distinguish between petroleum and hazardous substance mixtures.</li> <li>• Adding/deleting substances to/from the list of regulated hazardous substances and clarifying that only listed hazardous substances are regulated under the CBS program.</li> <li>• Conforming the definition of “underground tank system” to the federal definition of UST.</li> <li>• Clarifying that property owners are responsible for tank registration.</li> <li>• Implementing new federal and New York State statutory provisions requiring individuals responsible for actual operation of UST systems to be properly trained. The type of training required depends on the individual’s role in managing the tanks (general oversight versus emergency response only).</li> <li>• Implementing statutory provisions barring delivery of chemicals to certain leaking or otherwise inadequate tank systems and establishing a system for “red tagging” tanks.</li> <li>• Specifying that reportable quantities for spill reporting purposes are measured over a 24-hour period, consistent with federal hazardous substance spill reporting rules.</li> <li>• Specifying that spills at or above the RQ need not be reported if they are contained/controlled and do not reach land or waters, are cleaned up within 2 hours of discovery, the total volume of the spill is recovered or accounted for, and the spill does not result in certain conditions.</li> <li>• Clarifying the rules governing when spills of hazardous substance mixtures must be reported.</li> </ul> <p>The revisions to the CBS regulations can be found on DEC’s website at: <a href="http://www.dec.ny.gov/chemical/92526.html">www.dec.ny.gov/chemical/92526.html</a>.</p> | <p>The revisions are primarily of interest to owners/operators of CBS tank systems. In addition, the changes to the spill reporting requirements potentially affect anyone who manages listed hazardous substances.</p> <p>The revisions represent the first major overhaul of the CBS regulations in almost 20 years. Many of the changes—most notably the training and delivery prohibition requirements—are mandated by the 2005 EPAct. Other changes address long-standing problems with the regulations. For example, the prior definition of “hazardous substance” specifically included petroleum, creating conflicts with the petroleum bulk storage (PBS) regulations. To eliminate the confusion, DEC clarified when materials containing petroleum are regulated as hazardous substances versus petroleum. DEC also revised the spill reporting requirements to focus on more significant spills/releases.</p> | <p>The revised rule took effect October 11, 2015.</p> <p>A second set of revisions will be necessary to incorporate changes to the federal UST regulations adopted earlier this year.</p> |

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| <b>BULK STORAGE</b>   |   |  |  |
| <p>NEW YORK STATE<br/> <b>DEC Program Policy: DER-40, Operator Training</b></p> <p><i>Training Guide for Class A and B UST Operators</i><br/>           (Oct. 2015)</p> | <p>In conjunction with the revisions to the PBS and CBS regulations, DEC issued a <b>program policy, DER-40, Operator Training that summarizes the requirements for training UST operators</b> in fulfillment of the EPAct. Key provisions are summarized below:</p> <ul style="list-style-type: none"> <li>• Class A and B operators (i.e., those with primary and day-to-day responsibility, respectively, for UST systems) must be designated (i.e., identified in the facility registration) and authorized (i.e., pass the required exam) by October 11, 2016. Thereafter, Class A and B operators must be authorized within 30 days of assuming their duties. If a Class A or B operator leaves or dies, the system owner must designate a new operator within 30 days.</li> <li>• DEC is not directly offering training or reviewing/approving third-party training programs. However, DEC has developed the required certification exam for Class A and B operators, which can be taken online or in person. The policy includes detailed guidance on the exam administration process.</li> <li>• DEC will accept current and valid operating credentials issued by other states or by delegated local governments without requiring passage of the DEC exam.</li> <li>• If a facility is found to be in significant noncompliance, DEC will require the Class A or B operator to be reauthorized or replaced.</li> <li>• Class C operators (those responsible for responding in an emergency) will be trained and tested under the direction of an authorized Class A or B operator. The training must be documented.</li> </ul> <p>In a related development, DEC has issued a <i>Training Guide for Class A and B UST Operators</i> that provides an overview of the UST operator certification process and a detailed discussion of key UST program requirements (with illustrations) to prepare individuals to take the Class A/B exams.</p> <p>The program policy and training guide can be found on DEC’s website at: <a href="http://www.dec.ny.gov/regulations/2387.html">www.dec.ny.gov/regulations/2387.html</a>.</p> | <p>The program policy and training guide are primarily of interest to owners/operators of underground tank systems that are regulated under both the federal and New York State UST regulations (i.e., petroleum USTs subject to 6 NYCRR subpart 613-2 and all CBS USTs). Owners/operators of State-only petroleum USTs and ASTs are not subject to the training program.</p> <p>The training guide focuses on the requirements for petroleum USTs, noting that while many of the requirements for petroleum and chemical USTs are similar, CBS UST operators must be trained on the procedures and requirements for the chemicals stored at the facilities for which they are authorized.</p> | <p>Class A and B UST operators must be designated/authorized by <b>October 11, 2016</b>.</p> |

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| <b>WATER</b>   |  |   |   |
| <p>FEDERAL<br/> <b>NPDES Electronic Reporting Rule</b><br/>                     40 CFR Parts 9, 122, 123, 124 et al.<br/>                     80 Fed. Reg. 64064 (Oct. 22, 2015)</p> | <p>EPA adopted the <b>final rule requiring electronic submission of most paper-based reports under the National Pollutant Discharge Elimination System (NPDES) permit program</b>. The rule applies to reports, notifications and other submissions required under both individual and general NPDES permits, including: discharge monitoring reports (DMRs); notices of intent to discharge in compliance with a general permit; general permit waivers, certifications and notices of termination of coverage; and program reports. In addition to substituting electronic for paper reporting, the rule requires authorized NPDES programs to share a minimum set of data for all NPDES facilities, including non-major ones. Authorized NPDES programs may adopt EPA’s data system (the National Environmental Information Exchange Network) or elect to use their own data systems to collect NPDES program information. These programs must then electronically submit the federally-required data to EPA. To promote transparency and accountability, EPA plans to make this more complete set of data available to the public, providing communities and citizens with easily accessible information on facility and government performance. The rule includes an analysis of the initial costs associated with upgrading the information technology and infrastructure as well as the long-term costs/savings associated with implementation by EPA regions, states and permittees. EPA anticipates that after the first few years, the electronic submittal of data will result in significant savings, particularly for states.</p> <p>The rule can be found in the October 22, 2015 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>.</p> | <p>The rule is potentially of interest to any facility subject to an individual or general NPDES/SPDES permit.</p> <p>EPA significantly revised the regulations in response to public comment, providing states with additional time to implement certain program requirements and giving them more flexibility in granting electronic reporting waivers.</p> | <p>The final rule, which takes effect December 21, 2015, will be implemented in two phases. During Phase I, states must submit basic facility data and permit information to EPA within nine months of the effective date and start transmitting state performance data (inspections, violations, etc.) within one year. In addition, within one year, NPDES/SPDES permittees must begin submitting DMRs electronically. States have five years from the effective date to begin electronically collecting, managing and sharing the remaining information required to be submitted electronically (Phase 2).</p> |

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| <b>WATER</b>   |  |   |   |
| <p>NEW YORK STATE<br/> <b>Mercury Guidance under State Pollutant Discharge Elimination System Permit Program</b><br/>           TOGS 1.3.10<br/>           (Oct. 2015)</p> | <p>DEC extended <b>Technical and Operational Guidance Series (TOGS) document 1.3.10, entitled <i>Mercury – SPDES Permitting &amp; Multiple Discharge Variance, which provides guidance to DEC staff developing SPDES permits that regulate wastewater and stormwater discharges containing mercury.</i></b> TOGS 1.3.10 provides an overview of water quality issues relating to mercury, together with a detailed discussion of the permitting procedures for surface and ground water discharges. Because the water quality-based effluent limit for surface water is largely unattainable (0.70 nanograms/liter (ng/L)), DEC has determined that a multiple discharge variance (MDV) is necessary. The discharge limit and monitoring required under the MDV depends on various factors including: the type of facility, e.g., large and/or high priority publicly owned treatment works (POTW), or high-priority industry or other facilities; availability of mercury monitoring data; whether the permit already contains a mercury limit; and whether the mercury data shows that the facility can achieve a 50 ng/L daily maximum limit, the general level currently achievable (GLCA). Where there are 10 or more data points, the projected effluent quality (PEQ) must be evaluated and the limit set based on criteria set forth in the TOGS. The TOGS also specifies the mercury monitoring frequency and appropriate testing method as well as requiring facilities to implement a mercury minimization program (MMP) tailored to POTWs or industrial facilities. Permittees that refuse to be covered by the MDV may seek an individual discharge variance (IDV) in accordance with the procedures and standards spelled out in the TOGS. The TOGS includes extensive Tables and Appendices, including a table summarizing the permit limits, monitoring frequencies and mercury minimization programs under the MDV; mercury ambient surface water monitoring data and facility-specific wastewater monitoring data; sample SPDES permit requirements; and sample MMPs for high priority POTWs and industrial facilities.</p> <p>The mercury TOGS can be found on DEC’s website at:<br/> <a href="http://www.dec.ny.gov/chemical/24027.html">www.dec.ny.gov/chemical/24027.html</a>.</p> | <p>The policy is of interest to facilities with mercury limits in their SPDES permits or that discharge any quantity of mercury.</p> <p>Mercury is ubiquitous in the environment. According to the Northeast Regional Mercury Total Maximum Daily Load (TMDL), 98% of the mercury load to surface waters is the result of atmospheric deposition, with the remaining 2% due to wastewater discharges. All surface waters in New York currently exceed the water quality-based effluent limit of 0.70 ng/L. To help meet the standard, the TMDL calls for New York to implement various mercury reduction efforts, including establishing mercury limits in SPDES permits.</p> | <p>DEC first issued TOGS 1.3.10 in October 2010. The updated TOGS addresses the current state of mercury in New York and provides justification for the continuation of the MDV for 2015-2020 as revised.</p> |

**Other Recent Developments (Final)****AIR**

FEDERAL: EPA revised the **National Emission Standards for Hazardous Air Pollutants for primary aluminum reduction plants (40 CFR Part 63, subpart LL) following a residual risk and periodic technology review**. Under Clean Air Act § 112, 42 USC § 7412, EPA must assess whether any residual risk remains after imposing technology-based standards and revise them as necessary; EPA also must conduct a periodic review of the underlying technology to confirm that it remains current. EPA adopted minor changes to address residual risks associated with so-called Soderberg potlines and technological developments relating to certain work practices. In addition, EPA is amending the NESHAP to add standards for hazardous air pollutants not previously addressed. Major changes include: (1) establishing emission limits for certain pollutants from Soderberg potlines to address residual risk; (2) adopting work practices for anode bake furnaces and paste plants during startup and for potlines to minimize emissions of certain pollutants during normal operation; (3) adopting maximum achievable control technology (MACT) emission limits for certain previously unregulated hazardous air pollutants; (4) requiring facilities to comply with MACT standards at all times, including during startup, shutdown and malfunction; and (5) requiring facilities to submit electronic copies of certain required performance test reports through EPA's Electronic Reporting Tool. The rule took effect October 15, 2015; it can be found in the Federal Register issued on that date at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The revisions to subpart LL are primarily of interest to sources associated with the production of aluminum by electrolytic reduction. EPA estimates that there are 11 facilities in the nation subject to the primary aluminum standard.

FEDERAL: EPA **adopted NESHAPs for major sources in the brick and structural clay manufacturing and clay ceramics manufacturing source categories**. The rule replaces standards adopted in 2003 and vacated by a federal appeals court in 2008. The brick and structural clay products (BSCP) manufacturing standard, set forth at 40 CFR Part 63, subpart JJJJJ, applies to tunnel and periodic kilns at major sources that manufacture brick (e.g., face brick, structural brick, brick pavers and other brick; clay pipe; roof tile; extruded floor and wall tile; and/or other extruded, dimensional clay products). The rule includes: (1) mercury and non-mercury HAP emission limits for tunnel kilns (with different standards for large and small kilns); (2) health-based emission limits for acid gases from tunnel kilns; and (3) work practice standards for emissions of various contaminants from BSCP periodic kilns, dioxin/furan emissions from tunnel kilns, and startup and shutdown emissions from tunnel kilns. The clay ceramics manufacturing standard, set forth at 40 CFR Part 63, subpart KKKKK, applies to major sources that manufacture pressed floor tile, pressed wall tile and other pressed tile as well as sanitaryware such as toilets and sinks. The rule includes emission limits for acid gases, mercury, particulate matter (as a surrogate for non-mercury metals), and dioxins/furans. The precise standards depend on the type of equipment (roller kiln, tunnel kiln, dryer, glaze line, etc.). To demonstrate compliance with both standards, EPA is requiring initial and repeat five-year performance testing for regulated pollutants, continuous operating parameter monitoring, and daily visible emission (VE) checks. Certain facilities equipped with fabric filters can demonstrate compliance using a bag leak detection system instead of daily VE

checks. The final rule takes effect December 28, 2015; it can be found in the October 26, 2015 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The NESHAPs are primarily of interest to major sources in the brick and structural clay and clay ceramic source categories.

## OTHER

**FEDERAL: EPA rejected a pair of petitions under Section 21 of the Toxic Substances Control Act (TSCA) seeking to regulate mercury and carbon dioxide (CO<sub>2</sub>).** With respect to mercury, the petition sought to require EPA to promulgate a rule under TSCA § 8(a) to require persons who manufacture, process or import mercury into the United States to keep records of and submit information to EPA concerning such activities. EPA rejected the petition after concluding that its ongoing “Strategy to Address Mercury-Containing Products” was sufficient to carry out TSCA and was a better method of achieving the petitioners’ goals. With respect to CO<sub>2</sub>, the petition sought to require EPA to find under TSCA § 6 that the manufacture, processing, distribution in commerce, use or disposal of CO<sub>2</sub> presents or will present an unreasonable risk. While acknowledging petitioners’ argument that CO<sub>2</sub> and other greenhouse gases were contributing to ocean acidification, EPA found that the petitioners failed to provide either adequate specifics on the relief sought under TSCA or sufficient information on the costs and benefits associated with the proposed unreasonable risk finding. EPA also declared that other regulatory authorities could reduce the risk more effectively than TSCA. Both decisions can be found in the October 7, 2015 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The decisions are primarily of interest to manufacturers of products containing mercury and sources emitting CO<sub>2</sub>.

## Other Recent Developments (Proposed)

### HAZARDOUS WASTE

**FEDERAL: EPA proposed to amend the hazardous waste regulations relating to the import and export of hazardous waste from and into the United States** to improve consistency in both procedures and documentation. Specific changes include: (1) updating standards incorporated by reference to include current Organization for Economic Cooperation and Development (OECD) waste lists and codes; (2) requiring all exports and imports of hazardous waste comply with the OECD-based requirements set forth in 40 CFR Part 262, subpart H, rather than having separate schemes for OECD and non-OECD countries; (3) requiring the use of an international movement document for all export and import shipments of hazardous waste to facilitate the tracking of shipments across two or more countries; (4) requiring that the management (i.e., treatment and disposal, recovery) of each shipment of waste be completed within one year of delivery to minimize speculative accumulation; (5) requiring all imports/exports of hazardous waste, including universal waste, materials being shipped for precious metal recovery, and spent lead acid batteries going for reclamation, be

subject to the same procedures; (6) requiring electronic submittal of key export and import documents; and (7) integrating the hazardous waste export program with the International Trade Data System. EPA is accepting comments on the proposed revisions until **December 18, 2015**; the proposal can be found in the October 19, 2015 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The proposed rule is primarily of interest to companies engaged in the import/export of hazardous waste.

## CHEMICALS

**FEDERAL**: The **Department of Homeland Security (DHS)** is seeking comment on its list of **Chemicals of Interest (COI)** in anticipation of possible revisions to its **Chemical Facility Anti-Terrorism Standards (CFATS)** regulation. CFATS requires facilities that possess one or more COI above the screening threshold quantity (STQ) listed in the regulation to submit a “top-screen” analysis to DHS which may eventually lead to the preparation of a site security plan (SSP) or alternative plan for DHS approval. The COI list includes several hundred flammable, explosive and toxic chemicals that pose a potential threat from release, theft, or sabotage. With the recent notice, DHS is seeking comments on the Appendix A COI list, including the possible addition/deletion of chemicals, changes to STQs, changes to concentration/mixture rules, the classification of COIs within different security categories, and criteria for “counting rules,” including clarification of how to determine if a COI is in transportation. DHS is accepting comments on the Appendix A COI list until **November 30, 2015**; the notice can be found in the October 16, 2015 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The notice is of interest to any facility potentially regulated under the CFATS program.

## Upcoming Deadlines

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

**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](http://www.gpo.gov/fdsys) for details.

**November 30, 2015**: Deadline for submitting comments on the list of chemicals of interest regulated under DHS’s Chemical Facility Anti-Terrorism Standards. See the October 16, 2015 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**December 18, 2015**: Deadline for submitting comments on EPA’s proposed revisions to the regulations relating to the import and export of hazardous waste. See the October 19, 2015 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**December 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 (extended from November 24, 2015). See the September 25, 2015 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**January 21, 2016:** Deadline for submitting comments on EPA's proposed FIP, to be implemented in states that do not submit an approvable plan to implement the Clean Power Plan program. See the October 23, 2015 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.