ENVIRONMENTAL BREAKFAST CLUB
REGULATORY SUMMARY

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Final Statutes, Rulemakings, Guidance and Cases

Citation	Summary	Implications	Schedule/Notes
AIR			
FEDERAL **National Emission Standards for Hazardous Air Pollutants for Major Source Industrial, Commercial and Institutional Boilers and Process Heaters** 40 CFR Part 63, Subpart DDDDD 80 Fed. Reg. 72790 (Nov. 20, 2015)	EPA revised the **National Emission Standards for Hazardous Air Pollutants (NESHAP) for major source industrial, commercial and institutional boilers and process heaters**, set forth at 40 CFR Part 63, subpart DDDDD, in response to petitions for reconsideration. EPA adopted the major source boiler NESHAP in 2011 and revised it in January 2013. Following promulgation of the 2013 rule, EPA received petitions for reconsideration from numerous trade associations seeking review of various provisions. With the recent rulemaking, EPA addressed the following issues: • ***Startup and shutdown.*** EPA added an alternative definition of startup under which startup ends four hours after the unit begins supplying useful thermal energy. EPA also revised the definition of shutdown to clarify when it begins. Finally, EPA changed the work practices required during startup and shutdown periods, including adding recordkeeping requirements. • ***Carbon monoxide (CO) emission limits***. EPA retained the CO emission limit of 130 parts per million applicable to certain regulated units after accepting additional comments and data on the limit. • ***Particulate matter (PM) monitoring.*** In lieu of a continuous emission monitoring system, EPA retained the provision allowing certain facilities to monitor compliance with PM emission limits using a continuous parameter monitoring system, together with standards for deciding when exceedances of those standards constitute a violation. • ***Malfunction affirmative defense.*** Consistent with other recent NESHAP rulemakings, EPA deleted the affirmative defense to civil penalties for violations caused by malfunctions in light of recent court decisions. In addition, EPA adopted numerous technical corrections and clarifications to address inadvertent errors and omissions. The rule can be found in the November 20, 2015 Federal Register at: www.gpo.gov/fdsys.	The rule is primarily of interest to owners/operators of major source boilers and process heaters subject to regulation under the Subpart DDDDD NESHAP. As part of the rule, EPA also denied the requests for reconsideration with respect to all issues for which EPA did not grant reconsideration.	The rule took effect November 20, 2015.

Citation	Summary	Implications	Schedule/Notes
AIR			
NEW YORK STATE **Emergency Legionella Control and Cooling Tower Regulation** 10 NYCRR Part 4	The New York State Department of Health (DOH) adopted a **second emergency rulemaking, set forth at 10 NYCRR Part 4, requiring the registration, inspection and maintenance of cooling towers**—a term which includes not only cooling towers but evaporative condensers and fluid coolers that are part of recirculated water systems. Among other things, the regulation required owners of cooling towers to: register the tower online with DOH, sample for legionella and complete a cooling tower inspection by September 16, 2015, with periodic testing/inspections thereafter; and complete an annual compliance certification by November 1, 2016. Any required cleaning/disinfection activities relating to cooling towers must be performed by Category 7G certified pesticide applicators/technicians while the necessary inspections must be performed by a licensed professional engineer, certified industrial hygienist, certified water technologist or environmental consultant with specified training and experience. In addition cooling tower owners must develop and implement a maintenance plan and program in accordance with Section 7.2 of the ASHRAE standard *Legionellosis: Risk Management for Building Water Systems*; the plan must include routine legionella sampling. The rule also provides that all general hospitals and residential health care facilities "shall, as the department may determine appropriate" adopt a Legionella sampling plan for their potable water distribution systems, report the results of each sampling, and take necessary responsive measures. The emergency rule can be found in the December 2, 2015 State Register at: http://docs.dos.ny.gov/info/register/2015/december2/toc.html. General information about legionella and the emergency rule can be found at: www.health.ny.gov/diseases/communicable/legionellosis.	Given the breadth of the definition of cooling tower and the absence of a de minimis exemption, the regulation affects a wide range of facilities across New York State. The regulation also imposes legionella planning and testing requirements on general hospital and residential health care facilities.	The new emergency rule took effect November 10, 2015 and will expire February 7, 2016. According to the notice, DOH intends to adopt the emergency rule as a permanent rule and will publish a notice of proposed rulemaking "at some future date". DOH allowed the first emergency rule to expire without proposing a permanent rule.

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 80 Fed. Reg. 67838 (Nov. 3, 2015)	EPA **strengthened 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 to publicly owned treatment works (POTW). The rule sets standards for specific wastewater streams from fossil fuel and nuclear-fired power plants as follows: • ***Best available technology economically achievable (BAT).*** Direct discharges from existing facilities must satisfy BAT. After accepting comment on four "preferred options" for BAT, EPA established: (1) two sets of BAT limitations for fly ash transport water, bottom ash transport water, and flue gas mercury control (FGMC) wastewater—numeric effluent limit on total suspended solids (TSS) and a zero discharge limit for all pollutants in these wastewaters; (2) two sets of BAT for flue gas desulfurization (FGD) wastewater—a numeric limit on TSS and numeric limits on mercury, arsenic, selenium, and nitrate/nitrate as N; (3) two sets of BAT for gasification wastewater—a numeric limit on TSS and numeric limits on mercury, arsenic, selenium and total dissolved solids (TDS); and (4) a numeric effluent limit on TSS for combustion residual leachate from landfills and surface impoundments. Oil-fired and small generating units (50 megawatts or less) are subject to BAT equal to the TSS limitations in the existing best practicable control technology currently available (BPT) regulations. • ***Pretreatment standards for existing sources (PSES).*** The rule establishes PSES as follows: (1) zero discharge for all pollutants in fly ash transport water, bottom ash transport water and FGMC wastewater; (2) numeric standards on mercury, arsenic, selenium, and nitrate/nitrite as N for FGD wastewater; and (3) numeric standards on mercury, arsenic, selenium, and TDS for gasification wastewater. • ***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 regulation can be found in the November 3, 2015 Federal Register at: www.gpo.gov/fdsys.	EPA estimates that are approximately 1,100 facilities potentially covered by the standards. According to EPA, steam electric power plants contribute about 30% 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 focused 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 revisions to 40 CFR Part 423 are intended to address the toxic pollutants contained in these new wastewater streams and otherwise update the standards.	The final rule takes effect January 4, 2016.

Citation	Summary	Implications	Schedule/Notes
ENFORCEMENT			
NEW YORK STATE ***Environmental Monitoring Services*** Commissioner Policy #64	DEC issued an **updated policy specifying the procedures and standards for assigning environmental monitors to facilities** in New York. The policy, entitled *Environmental Monitoring Services*, identifies the procedures to be followed when requiring a facility to employ an individual or firm as an environmental monitor at a site. Services provided by an environmental monitor may include construction oversight, on-site inspections, oversight of day-to-day activities, and review of plans and operating documents. According to the policy, environmental monitoring services can be provided by appropriately qualified individuals in one of three ways in descending order of preference: (1) DEC employees; (2) individuals employed by another governmental or quasi-governmental agency; and (3) individuals or firms whose services are directly contracted by DEC. Environmental monitoring services will be provided through the terms of an environmental permit, order on consent, Commissioner's order after hearing, judicial order or brownfield cleanup agreement (BCA). Use of a memorandum of agreement, memorandum of understanding, or other cooperative agreement must be approved by the General Counsel and is available only if the preferred means are not available. The environmental monitoring language contained in the permit, order or BCA must conform to language specified in Appendices A or B of the policy unless changes are approved by DEC's General Counsel. The program policy can be found on DEC's website at: www.dec.ny.gov/regulations/64558.html.	Environmental monitors may be employed in the following cases: (1) where environmental monitoring is required by law (e.g., commercial hazardous waste facilities utilizing secure land burial as a primary disposal technique); (2) where compliance history or practices over the past five years reveal an inability or unwillingness to comply with environmental laws or other evidence of serious noncompliance; (3) where past or current practices have resulted in conditions which pose a significant threat to public health or the environment or indicate significant impacts are likely to occur; or (4) where justified by exceptional circumstances relating to facility size, throughput, location or nature of operations.	The updated policy was issued November 4, 2015. DEC revised the policy following a public notice and comment period to, among other things, delete a provision allowing the assignment of nongovernment monitors directly contracted by the facility and revise the criteria for assigning monitors.

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
AIR/CLIMATE CHANGE			
FEDERAL **Update to Refrigerant Management Requirements of Stratospheric Ozone Protection Program** 40 CFR Part 82 80 Fed. Reg. 69458 (Nov. 9, 2015)	EPA proposed **major revisions to the rules governing air conditioning and refrigeration equipment under Section 608 of the Clean Air Act** (CAA), which seek to minimize emissions of ozone-depleting substances (ODS) and their substitutes into the environment from such equipment. EPA's existing regulations, which are set forth at 40 CFR Part 82, subpart F, establish a comprehensive program for managing ODS, addressing such issues as technician and equipment certification, leak detection and repair, equipment disposal, and recordkeeping and reporting, among other subjects. With this rulemaking, EPA is proposing to update the existing requirements and extend them, as appropriate, to substitute refrigerants, most notably those with a high global warming potential. Specific changes include: • Revising the regulations to cover substitute refrigerants; • Lowering the leak rate threshold above which owners/operators of refrigeration and air conditioning equipment normally containing 50 or more pounds of refrigerant must repair leaks. • Requiring leak inspections or continuous monitoring devices for refrigeration and air conditioning equipment (annual for systems containing 50 pounds or more of refrigerant and quarterly for commercial refrigeration and industrial process refrigeration systems normally containing 500 pounds or more of refrigerant). • Prohibiting operation of systems normally containing 50 or more pounds of refrigerant that have leaked 75% or more of their full charge for two consecutive years. • Extending to substitute refrigerants the provision prohibiting sales to non-certified individuals, while allowing purchases of small cans (2 pounds or less) of non-ODS refrigerant for motor vehicle air conditioner (MVAC) servicing provided the cans are equipped with self-sealing valves. • Requiring technicians to keep records of refrigerant recovered during disposal of systems with a charge from 5-50 pounds (larger and small units are already subject to recordkeeping requirements). The proposal can be found in the November 9, 2015 Federal Register at: www.gpo.gov/fdsys.	The rule is primarily of interest to owners/operators of comfort cooling, commercial refrigeration, and industrial process refrigeration and air conditioning equipment and, to a lesser extent, individuals engaged MVAC repairs. EPA proposed major changes to the leak repair requirements in December 2010, which were never finalized. Since then, EPA's attention has shifted to the management of substitute refrigerants, many of which are potent greenhouse gases. With this rulemaking, EPA is revising the regulations to more clearly address these substitutes. In addition, consistent with its so-called "Next Generation Compliance" initiative, EPA is proposing various changes, such as the new inspection requirements, that are designed to improve day-to-day compliance. EPA also is proposing to revise and reorganize the rule to make it more user-friendly.	EPA is accepting comments on the proposed rule until **January 8, 2016**.

Citation	Summary	Implications	Schedule/Notes
WATER			
NEW YORK STATE **Incorporation of Flow-Related Conditions in Water Withdrawal Permits** TOGS 1.3.12	DEC made available for comment **draft Technical Operational Guidance Series (TOGS) 1.3.12, entitled *Incorporation of Flow-Related Conditions in Water Withdrawal Permits*** which outlines the procedures for incorporating flow-related conditions in water withdrawal permits for purposes of protecting classified uses and assuring compliance with applicable water quality standards. The legislature adopted a new program in 2011 that requires permits to withdraw 100,000 gallons or more per day of surface or ground water. The draft TOGS contains procedures for ensuring that sufficient stream flows are maintained to protect aquatic life and prevent impairments. Among other things, it contains a detailed methodology for establishing passby flows (streamflow that should be allowed to pass downstream of a water withdrawal point to support downstream usages) and conservation releases (flow that should be continuously released from a dam or impoundment structure to support downstream usages). The TOGS also addresses: (1) the circumstances under which alternative passby flows and conservation releases to those established using the methodology in the TOGS will be allowed; (2) options for establishing permit conditions to address streamflow issues, including the use of action levels (triggers for the permittee to notify DEC that specified streamflow levels have been reached and make reasonable efforts to reduce/cease water withdrawal); (3) monitoring and reporting requirements; and (4) cumulative impacts of multiple flow alterations. The TOGS is accompanied by guidance entitled *Technical Methods for Determining Passby Flows for Ungaged Waterways.* The draft TOGS can be found at: www.dec.ny.gov/lands/104057.html.	The draft guidance is potentially of interest to facilities required to obtain water withdrawal permits. With respect to facilities that have already received permits, the TOGS specifies that new flow or release requirements generally should not be added unless DEC concludes that a flow-related impairment exists in the waterbody from which the permittee withdraws water.	DEC is accepting comments on the draft TOGS until **December 21, 2015**.

Other Recent Developments (Final)

AIR

FEDERAL: EPA **revised the NESHAP for petroleum refineries** following a residual risk/periodic technology review. Under Clean Air Act § 112, EPA must assess whether any residual risk remains after imposing technology-based NESHAPs and revise the standard as necessary; EPA also must conduct a periodic review of the underlying technology to confirm that it remains current. The existing standards apply to major sources consisting of petroleum refineries generally (40 CFR Part 63, subpart CC, otherwise known as MACT 1) and catalytic cracking units, catalytic reforming units and sulfur recovery units (40 CFR Part 63, subpart UUU, otherwise known as MACT 2). Following the residual risk review, EPA expanded the MACT 1 control requirements and extended them to small tanks and tanks with lower vapor pressures. With respect to the technology review, EPA finalized a fenceline monitoring program under MACT 1 to address fugitive emissions. Under that program, EPA set an annual average benzene concentration standard at the refinery fenceline and is requiring periodic monitoring to determine compliance with that limit. EPA hopes this new monitoring procedure will enable facilities to quickly identify significant increases in emissions and implement necessary corrective actions. In response to public comments, EPA allowed reduced monitoring for facilities with consistently low fenceline concentrations and changed the fenceline monitoring procedures. Other changes include: (1) requiring a comprehensive program of process changes and pollution prevention measures for flares and pressure release devices; (2) eliminating exemptions to emission limits during periods of startup, shutdown and malfunction; and (3) requiring electronic submission of performance test and evaluation reports. EPA also made technical amendments and corrections to the petroleum refinery NSPS, set forth at 40 CFR Part 60, subparts J and Ja. The final rule will take effect February 1, 2016; it can be found in the December 1, 2015 Federal Register at: www.gpo.gov/fdsys.

Implications: According to EPA, there are currently 142 major source refineries in the United States.

NEW YORK STATE: DEC replaced 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 (SO_2) in order to address ongoing ozone and fine particulate matter nonattainment problems, primarily in the Northeast. With this rulemaking, DEC repealed 6 NYCRR Parts 243, 244, and 245, which were adopted to implement the CAIR, and replaced 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: Transport Rule SO_2 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 SO_2 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 (a minimum of 10% of budgeted 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. The rules can be found on DEC's website at: www.dec.ny.gov/regulations/103194.html.

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

CLIMATE CHANGE

NEW YORK STATE: DEC **amended its regulations to incorporate California's latest motor vehicle greenhouse gas (GHG) emission standards and zero emission vehicle (ZEV) standards** into 6 NYCRR Part 218, Emission Standards for Motor Vehicles and Motor Vehicle Engines. California last updated its GHG emission standards in 2012 for 2017 to 2025 model year passenger cars, light-duty trucks, and medium-duty passenger vehicles up to 10,000 pounds gross vehicle weight rating. The federal GHG emission standards are not as stringent as the California standards due primarily to differences in how California and EPA treat incentives for certain vehicles and equipment. In a related development, DEC conformed its ZEV requirements to the California program. The ZEV program requires manufacturers to sell an increasing percentage of ZEV vehicles (or equivalents) in the State. The rule can be found on DEC's web site at: www.dec.ny.gov/regulations/102245.html.

Implications: The revisions are primarily of interest to motor vehicle manufacturers.

CHEMICALS

FEDERAL: EPA **added 1-bromopropane to the list of toxic chemicals subject to reporting under the Toxics Release Inventory (TRI) program**. Under Section 313 of the Emergency Planning and Community-Right-to-Know Act, certain facilities that manufacture, process or otherwise use listed hazardous chemicals in amounts above specified thresholds must report the amount of the chemical released to air or water or disposed of on land on an annual basis. The interagency National Toxicology Program recently classified 1-bromopropane as a substance "reasonably anticipated to be a human carcinogen" following an extensive review process. EPA concluded that this evidence is sufficient to include 1-bromopropane on the TRI list of chemicals. The final rule, which took effect November 30, 2015, can be found in the November 23, 2015 Federal Register at: www.gpo.gov/fdsys. It applies for the reporting year beginning January 1, 2016 (reports due July 1, 2017).

Implications: The rule is potentially of interest to facilities that manufacture, process or otherwise use significant quantities of 1-bromopropane.

SOLID WASTE

NEW YORK STATE: The Governor recently signed a bill designed to **force DOH to oversee a program to facilitate the safe disposal of unused controlled substances by pharmacies**. In 2013, the Legislature enacted a bill requiring DOH to adopt regulations designed to allow pharmacies to accept controlled substances from customers for disposal, consistent with anticipated changes to Drug

Enforcement Administration (DEA) regulations. Although the DEA rules were adopted, DOH had not developed the State regulations needed to implement the changes. Assembly bill A.6062 amended Public Health Law § 3343-b to allow pharmacies and other DEA authorized collectors to immediately begin functioning as controlled substance collection sites provided they comply with federal laws and regulations. The law makes clear that the program can be implemented "notwithstanding [DOH's] failure to promulgate any rule or regulation providing for the implementation thereof." The law, which took effect immediately, can be found on the Assembly website at: http://assembly.state.ny.us.

Implications: The rule is primarily of interest to pharmacies and other DEA-authorized controlled substance collectors.

WATER

NEW YORK STATE: DEC **revised its water quality standards for Class I and Class SD saline surface waters to require them to be suitable for primary contact recreation**, such as swimming and water skiing. Consistent with the requirements of the federal Clean Water Act (CWA), the waters of the state are grouped into classes based on their highest and best use. Water quality standards are then set with the goal of protecting these uses; the higher the use, the stricter the applicable water quality standard. The CWA provides that "wherever attainable" water quality should provide for "recreation in and on the water" by 1983. DEC adopted the new stricter standards for Class I and Class SD saline surface waters to help the State achieve this so-called "swimmable goal." The rule revised the descriptions of Class I and Class SD saline surface waters to include a requirement that the water be suitable for contact recreation while providing that "other factors may limit the use for this purpose". In addition, DEC revised the total and fecal coliform standards to reflect use of the water for swimming purposes. The rule, which took effect November 4, 2015, can be found on DEC's website at: www.dec.ny.gov/regulations/99546.html.

Implications: Class I and Class SD saline surface waters are found in New York City and Suffolk County.

OTHER

FEDERAL: EPA, in conjunction with numerous other entities, published ***The National Radon Action Plan***, which outlines a program to eventually eliminate avoidable radon-induced lung cancer by incorporating radon testing, radon mitigation and radon-resistant construction into the systems that govern purchasing, financing, constructing and renovating homes and other buildings. The current plan follows EPA's 2010 *Federal Radon Action Plan*, which focused on implementing policies to find, fix and prevent high radon levels in government-influenced buildings. Building on the federal plan, the National Radon Action Plan identifies four goals to be implemented over the next five years, together with a list of strategies and desired outcomes relating to each goal. The four goals are; build in radon risk reduction; provide incentives and support for radon risk reduction; build capacity to test and mitigate using professional radon services; and increase visibility for the radon issue. In identifying and prioritizing the strategies for each goal, EPA considered four criteria—impact, level of effort, feasibility and measurability. In addition to the long-term goals, the plan identifies a

series of seven short-term goals to be implemented in the upcoming year. The National Radon Action Plan, together with other radon-related information, can be found on EPA's web site at: www.epa.gov/radon.

Implications: The rule is generally of interest to anyone residing or working in a building in areas with significant natural radon levels in the soil.

Other Recent Developments (Proposed)

AIR

FEDERAL: EPA is **seeking comment on a proposed supplemental finding that consideration of cost does not alter its previous conclusion that it is appropriate and necessary to regulate coal and oil-fired power plants under the NESHAP program** in the wake of a Supreme Court decision which held that EPA erred when it made the finding without considering cost. After reviewing the environmental and health impacts of hazardous air pollutant (HAP) emissions from power plants, EPA concluded in 2000 that it was "appropriate and necessary" to regulate these emissions under the NESHAP program. EPA reiterated that finding in 2011 and issued the Mercury and Air Toxics Standards (MATS) for power plants in 2012. To address the Supreme Court's decision, EPA proposed the supplemental finding which: summarizes the hazards posed by HAP emissions from power plants; discusses how costs are addressed under CAA § 112(n)(1), the provision requiring EPA to study power plant emissions and decide whether regulation was appropriate and necessary; and analyzes the various costs associated with regulating HAPs from power plants (e.g., predicted compliance costs, annual compliance costs as a percentage of power sector sales, and impact on retail price of electricity). EPA concluded that these and other costs did not alter its determination that regulation of HAP emissions from power plants is appropriate. In making this proposed finding, EPA made clear that it was taking comment only on the limited question of cost; EPA also made clear that the CAA provides little guidance on making cost determinations in relation to deciding whether to regulate power plants under CAA § 112(n)(1). Accordingly, EPA also is taking comment on a memorandum explaining the legal basis for its conclusions regarding cost. EPA is accepting comments on the supplemental finding and legal memorandum until **January 15, 2016**; it can be found in the December 1, 2015 Federal Register at: www.gpo.gov/fdsys.

Implications: The proposed supplemental finding is primarily of interest to owners/operators of coal and oil-fired power plants subject to the MATS rule.

FEDERAL: EPA **proposed to update its 2011 Cross-State Air Pollution Rule to address interstate emission transport with respect to the 2008 ozone national ambient air quality standards** (NAAQS). The CSAPR established a multi-state cap-and-trade program to limit emissions of SO_2 and NOx from electric generating units (EGUs) for purposes of addressing ozone and fine PM nonattainment problems, primarily in the Northeast. With the recent rulemaking, EPA found that ozone season NOx emissions in 23 eastern states adversely affect the ability of downwind states to attain and maintain the 2008 ozone NAAQS. To address this problem, EPA is proposing to issue federal implementation plans (FIPs) that update the existing CSAPR NOx ozone-season emissions budgets

for EGUs in these states. EPA will finalize the FIP for any state that does not have an approved state implementation plan addressing its contribution by the date the FIP rule is finalized. EPA is proposing to implement the FIP starting with the 2017 ozone season. The rule also responds to a court decision remanding certain CSAPR Phase 2 NOx ozone season emission budgets to EPA for further review. The deadline for submitting comments is **January 19, 2016**; the proposed rule can be found in the December 3, 2015 Federal Register at: www.gpo.gov/fdsys.

Implications: The rule is primarily of interest to owners/operators of EGUs in the 23 states, including New York, potentially subject to the FIP.

FEDERAL: EPA **proposed revisions to its rules governing the exclusion of "exceptional events" that contribute to air quality violations** to address issues that have arisen since the rule was first adopted. In 2005, Congress amended the CAA to authorize EPA to exclude data associated with exceptional events from consideration in making attainment determinations and other NAAQS-related decisions. EPA adopted regulations implementing the exceptional events provision in 2007 and followed up in 2013 with an interim guidance designed to address implementation issues. With this rulemaking, EPA is proposing to: (1) clarify that the statute applies only to a specific set of regulatory actions (i.e., attainment designations); (2) address how each of the key elements in the statute should be interpreted (i.e., what is an event that "affects air quality," is not "reasonably controllable or preventable," is "caused by" "human activity that is unlikely to recur" or by a "natural event"); and (3) clarify the content and organization of exceptional event submittals, including requiring an initial notification by the state to EPA of a potential exceptional event. In conjunction with the proposed, rule, EPA is making available for comment a *Draft Guidance on the Preparation of Exceptional Events Demonstrations for Wildfire Events that May Influence Ozone Concentrations.* Going forward, EPA also plans to develop a separate guidance document explaining when data can be excluded for regulatory actions other than attainment designations. EPA is accepting comments on the draft rule and guidance document until **January 19, 2016**; the rulemaking can be found in the November 20, 2015 Federal Register at: www.gpo.gov/fdsys.

Implications: The proposed rule is primarily of interest to state agencies responsible for ambient air quality monitoring and data analysis in conjunction with nonattainment designations.

CLIMATE CHANGE

NEW YORK STATE: DEC **proposed projections of sea-level rise** in fulfillment of the 2014 Community Risk and Resiliency Act (CRRA), which was enacted to ensure that decisions regarding certain State permits and expenditures consider climate risk, including sea-level rise. The proposed regulations, set forth at 6 NYCRR Part 490, contain a range of five sea level rise projections (low, low-medium, medium, high-medium and high) for three regions of the State (Mid-Hudson, New York City/Lower Hudson Region, and Long Island Region) which were developed using the ClimAID model. DEC, working with the New York Department of State, is currently developing guidance regarding implementation of the CRRA. Applicants for permits or funding will not be required to

consider Part 490 sea-level rise projections until the guidance is issued. DEC is accepting comments on the proposed projections until **December 28, 2015**; the proposed rule can be found on DEC's web site at: www.dec.ny.gov/regulations/103870.html.

Implications: For the short term, the proposed rule is primarily of interest to climate scientists.

OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: The Occupational Safety and Health Administration (OSHA) is seeking comment on its **draft *OSHA Safety and Health Program Management Guidelines***, which provide a framework for developing a proactive program for managing workplace safety and health targeted primarily at small and mid-sized workplaces. The guidelines identify seven core program elements and list examples of steps (i.e., action items) businesses can take to improve their health and safety programs with respect to each element. The seven core program elements are: management leadership, worker participation, hazard identification and assessment, hazard prevention and control, education and training, program evaluation and improvement, and coordination and communication on multiemployer worksites. The guidelines make clear that implementing a program for managing workplace safety is not a substitute for compliance with applicable OSHA standards and includes an appendix (with tables) clarifying the relationship between key OSHA standards and the program management guidelines' core elements. OSHA is accepting comments on its draft program management guidelines until **February 15, 2016**; the document can be found on its website at: www.osha.gov/shpmguidelines/index.html.

Implications: The draft guidelines are potentially of interest to any facility regulated by OSHA.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

December 21, 2015: Deadline for submitting comments on DEC's draft TOGS *Incorporation of Flow-Related Conditions in Water Withdrawal Permits.* The document can be found on DEC's website at www.dec.ny.gov/lands/104057.html.

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 for details.

December 28, 2015: Deadline for submitting comments on DEC's proposed regulations relating to projected sea level rise. The proposed rule can be found on DEC's web site at www.dec.ny.gov/regulations/103870.html.

January 8, 2016: Deadline for submitting comments on EPA's proposed update to the CAA refrigerant management requirements. See the November 9, 2015 Federal Register at www.gpo.gov/fdsys for details.

January 15, 2016: Deadline for submitting comments on EPA's proposed supplemental finding that consideration of cost does not alter its previous conclusion that it is appropriate and necessary to regulate HAP emissions from coal and oil-fired power plants. See the December 1, 2015 Federal Register at www.gpo.gov/fdsys for details.

January 19, 2016: Deadline for submitting comments on EPA's proposed revisions to its exceptional events rule relating to the exclusion of event-affected air quality monitoring data. See the November 20, 2015 Federal Register at www.gpo.gov/fdsys for details.

January 19, 2016: Deadline for submitting comments on EPA's proposed rule updating the Cross-State Air Pollution Rule to address interstate emission transport with respect to the 2008 ozone NAAQS. See the December 3, 2015 Federal Register at 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 for details.

February 15, 2016: Deadline for submitting comments on the draft *OSHA Safety and Health Program Management Guidelines*. The document can be found on OSHA's website at www.osha.gov/shpmguidelines/index.html.