



## **ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY**

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## Final Statutes, Regulations, Guidance and Cases

| Citation                                                                                                                            | Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       | Implications                                                                                                                                                                           | Schedule/Notes                                     |
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| <b>AIR</b>                                                                                                                          |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |                                                                                                                                                                                        |                                                    |
| <b>FEDERAL Retention of National Ambient Air Quality Standards for Lead</b><br>40 CFR Part 50<br>81 Fed. Reg. 71906 (Oct. 18, 2016) | <p>EPA decided to <b>retain the existing lead national ambient air quality standards</b> (NAAQS) after finding that the current standards provide the requisite protection to public health with an adequate margin of safety. EPA lowered the lead NAAQS in 2008 from 1.5 micrograms per cubic meter (<math>\mu\text{g}/\text{m}^3</math>) to <math>.15 \mu\text{g}/\text{m}^3</math> measured as lead in total suspended particulate matter. Under the current standard, an area violates the NAAQS if lead in the ambient air averaged over three months equals or exceeds <math>.15 \mu\text{g}/\text{m}^3</math> once during a three-year period. After reviewing recent data on the health and environmental effects of lead in the ambient air, EPA concluded that the current primary standard protects public health with an adequate margin of safety, including at risk populations such as young children. EPA also found that the available evidence did not support lowering the secondary standard to address ecosystem (i.e., welfare) effects.</p> <p>The final rule can be found in the October 18, 2016 Federal Register at: <a href="http://www.gpo.gov/fdsys">www.gpo.gov/fdsys</a>.</p> | The announcement is primarily of interest to owners/operators of airports, primary and secondary lead smelters, battery manufacturers and other significant sources of lead emissions. | The final rule will take effect November 17, 2016. |

| Citation                                                                                           | Summary                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Implications                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Schedule/Notes                                                                                                                                                                                                                                                        |
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| <b>OCCUPATIONAL SAFETY AND HEALTH</b>                                                              |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |                                                                                                                                                                                                                                                                       |
| FEDERAL<br><i>Recommended Practices for Safety and Health Programs</i><br>OSHA 3885<br>(Oct. 2016) | <p>OSHA issued a <b>new guidance document—<i>Recommended Practices for Safety and Health Programs</i></b>—to help employers establish a methodical approach for improving safety and health in the workplace. The document identifies proactive measures employers can implement to find and fix hazards before they cause injury or illness. The document identifies seven core program elements followed by action items, which are broken down into specific tasks for accomplishing the particular action item. The seven core program elements and their associated action items are:</p> <ul style="list-style-type: none"> <li>• <b>Management leadership.</b> Communicate commitment to safety and health program; define program goals; allocate resources; and expect performance.</li> <li>• <b>Worker participation.</b> Encourage worker participation; encourage workers to report safety and health concerns; give workers access to safety and health information; involve workers in all aspects of program; and remove barriers to participation.</li> <li>• <b>Hazard identification and assessment.</b> Collect existing information about workplace hazards; inspect the workplace for safety hazards; identify health hazards; conduct incident investigations; identify hazards associated with emergency and nonroutine situations; and characterize the nature of identified hazards, identify interim control measures, and prioritize the hazards for control.</li> <li>• <b>Hazard prevention and control.</b> Identify control options; select controls; develop and update a hazard control plan; select controls to protect workers during nonroutine operations/emergencies; implement selected controls in the workplace; and follow up to confirm that controls are effective.</li> <li>• <b>Education and training.</b> Provide program awareness training; train employers, managers and supervisors on their roles in the program; train workers on their specific roles; and train workers on hazard identification and controls.</li> <li>• <b>Program evaluation and improvement.</b> Monitor performance and progress; verify that the program is implemented and operating; and correct program shortcomings and identify opportunities to improve.</li> <li>• <b>Communication and coordination for host employers, contractors and staffing agencies.</b> Establish effective communication and coordination.</li> </ul> <p>The recommended practices guidelines can be found on the OSHA website at: <a href="http://www.osha.gov/shpguidelines/index.html">www.osha.gov/shpguidelines/index.html</a>.</p> | <p>The guidelines are intended to help employers develop a proactive approach to “finding and fixing” workplace hazards before they cause injury or illness through collaboration between employers and employees. Although potentially useful to any employer, they should be particularly helpful to small and medium-sized businesses of all types. The guidelines, which were originally issued in 1989, have been updated to reflect changes to the workplace, including: the shift from a manufacturing to a service base and from a fixed to a more mobile workforce; the introduction of new hazards associated with automation; greater workforce diversity; the recognition that certain industries traditionally viewed as safe (such as healthcare, lodging, retail and transportation) present significant hazards; and increased temporary and contract employment.</p> | <p>The website containing the guidelines provides access to numerous resources and tools to support implementation of the recommended practices, including downloadable templates, worksheets, reference material, and relevant articles and information sources.</p> |

## Other Recent Developments (Final)

### AIR

**FEDERAL: EPA updated its 2011 Cross-State Air Pollution Rule (CSAPR) to address interstate emission transport with respect to the 2008 ozone NAAQS.** The CSAPR established a multi-state cap-and-trade program to limit emissions of sulfur dioxide (SO<sub>2</sub>) and nitrogen oxide (NO<sub>x</sub>) from electric generating units (EGUs) for purposes of addressing ozone and fine particulate matter nonattainment problems, primarily in the Northeast. With the recent rulemaking, EPA found that ozone season NO<sub>x</sub> emissions in 22 eastern states adversely affect the ability of downwind states to attain and maintain the 2008 ozone NAAQS. To address this problem, EPA issued federal implementation plans (FIPs) that update the existing CSAPR NO<sub>x</sub> ozone-season emission budgets for EGUs in these states. These FIPs take effect starting with the 2017 ozone season although states covered by the rule can submit a good neighbor state implementation plan to replace them if they choose. The final rule takes effect December 27, 2016; it can be found in the October 26, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The rule is primarily of interest to owners/operators of EGUs in the 22 states, including New York, potentially subject to the FIP.

**FEDERAL: EPA revised the public notice provisions for permits issued under the Title V and New Source Review (NSR) permit programs,** replacing newspaper publication with electronic notice requirements. According to EPA, the change will increase public awareness of draft permits in the face of reduced newspaper readership and increased internet access. The action removes the requirement that draft permits for sources subject to major NSR, Title V or other federal permit programs be noticed in a newspaper of general circulation. Instead, notice of draft permits issued by EPA or other agencies implementing federal air permitting regulations will be published electronically. The e-notice platform must be easily accessible to the public and “user friendly.” In addition, the agency must post the draft permit online for the duration of the public comment period and provide reasonable access to other documents that support the permit decision. State agencies with delegated authority can either implement an e-notice program or retain traditional newspaper notice requirements. However, they must select one method and use it for all permits to ensure the public knows how notice is provided. EPA and the states will continue to provide direct notice to individuals who ask to be included on a mailing list. The final rule takes effect November 17, 2016 and can be found in the October 18, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The rule is primarily of interest to entities seeking Title V, major NSR or other Clean Air Act (CAA) permits and to members of the public interested in air permitting. DEC has the option of retaining its existing notice requirements or revising them to eliminate newspaper publication requirements.

## CLIMATE CHANGE

FEDERAL: EPA and the National Highway Traffic Safety Administration (NHTSA) **adopted stricter greenhouse gas (GHG) emission standards and improved fuel efficiency standards for medium and heavy-duty trucks and buses.** The standards apply to vehicles in the following categories: (1) combination tractors (i.e., semi trucks); (2) certain trailers; (3) heavy-duty pickup trucks and vans (i.e., conventional vehicles that are too large to be subject to the standards for light-duty vehicles and trucks); and (4) vocational vehicles (e.g., delivery, refuse, utility, dump, and cement trucks; transit, shuttle and school buses; emergency vehicles; and tow trucks). The regulation also includes standards and test cycles for engines that power combination tractors and vocational vehicles. In general, the standards differ among vehicle categories depending on the size and configuration of the vehicle. Unlike the first phase of the standards, the second phase is intended to be “technology-forcing,” with manufacturers expected to use technologies that are now under development or not yet widely deployed. To achieve the necessary reductions, the regulations anticipate that manufacturers will implement engine and transmission upgrades, aerodynamic improvements, and/or tire rolling resistance improvements, among other changes. The new standards will be phased from 2018 to 2027, beginning with trailers in 2018. The schedules differ for each of the regulated truck and engine categories. Although the focus of the standards is on reducing emissions of combustion-related GHGs, the program includes standards to control leakage from air conditioners as well as emissions of nitrous oxide. According to EPA, the savings associated with reduced fuel use will outweigh the costs of the technology improvements, particularly for semi trucks, which typically are driven many miles each year. The rules will take effect on December 27, 2016; they can be found in the October 25, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The rules are primarily of interest to heavy-duty vehicle and engine manufacturers and importers and to potential purchasers of vehicles/engines.

## REMEDIATION

FEDERAL: EPA issued **guidance intended to encourage pursuit of greener alternatives when developing and implementing remedial activities under the federal Superfund program.** The guidance, entitled *Consideration of Greener Cleanup Activities in the Superfund Cleanup Process*, recommends approaches for EPA regional staff to consider when evaluating greener cleanup options throughout the remedy selection process and in conjunction with non-time critical removal actions. For purposes of the guidance, EPA defines “greener cleanup activities” as “practices or technologies that reduce or mitigate the environmental impacts of CERCLA removal and remedial actions, while meeting regulatory and other cleanup requirements.” The policy emphasizes that all remedies must, at minimum, satisfy the threshold requirements of protecting public health and the environment and complying with applicable or relevant and appropriate requirements. Assuming the threshold requirements are met, the guidance encourages greener cleanup activities at each stage of the remedial process. Examples include using cleaner and more energy efficient equipment and construction techniques and more sustainable materials and generating renewable energy on-site. The guidance encourages EPA regions to conduct a best practices analysis or, at more complex sites, to undertake a “footprint analysis” that quantitatively assesses the environmental

footprint of particular cleanup phases or activities. The guidance can be found on EPA's website at: [www.epa.gov/superfund/superfund-green-remediation](http://www.epa.gov/superfund/superfund-green-remediation).

Implications: The guidance is potentially of interest to engineers and others responsible for developing site cleanup strategies under the federal Superfund program.

## WATER

FEDERAL: EPA announced a series of **measures to assist communities with long-term stormwater management**. Of particular note, EPA released a draft guide, entitled *Community Solutions for Stormwater Management: A Guide for Voluntary Long-Term Planning*, which establishes a series of basic concepts designed to assist state and local governments in developing a stormwater plan that integrates stormwater management with communities' broader plans for economic development, infrastructure investment, and environmental compliance. The goal of this effort is to help communities prioritize actions related to stormwater management in conjunction with capital improvement plans, integrated plans, master plans or other planning efforts. In conjunction with the Guide, EPA also announced that it is developing a web-based Stormwater Toolkit that will include technical and financing resources to assist communities with the long-term planning process. Finally, EPA announced that it was providing coordinated technical assistance to five communities to develop long-term stormwater plans that can eventually serve as national models. Information about this initiative can be found on EPA's website at: [www.epa.gov/npdes/stormwater-planning](http://www.epa.gov/npdes/stormwater-planning).

Implications: The announcement is primarily of interest to communities responsible for stormwater planning.

FEDERAL: EPA issued a new **National Pollutant Discharge Elimination System (NPDES) Pesticide General Permit for Point Source Discharges from the Application of Pesticides**. This NPDES general permit is required for "operators" planning to apply pesticides labeled for aquatic uses to, in or over the surface waters of the United States. The general permit addresses discharges to waters of the United States of chemical pesticides that leave a residue and biological pesticides. Examples include mosquito and other flying insect pest control, weed and algae pest control, animal pest control (e.g., fish, lampreys, mollusks), and forest canopy pest control. To obtain coverage under the permit, the applicant must submit a notice of intent (NOI) and comply with the terms of the general permit. The general permit, which will remain in effect for five years, replaces an earlier permit that expired October 31, 2016. Like the earlier permit, it contains nine sections: coverage; technology-based effluent limitations; water quality-based effluent limitations; monitoring; pesticide discharge management plan; corrective action; recordkeeping and annual reporting; EPA contact information; and permit conditions applicable to specific states, Indian Country or territories. While the requirements of the 2016 permit are largely the same as the 2011 permit it replaces, EPA has updated certain minor aspects of the permit. Information about the new permit can be found in the November 1, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: New York has taken delegation of the NPDES program and has issued its own general permit for pesticide discharges to surface water. However, DEC will likely consult the revised federal permit when it takes steps to review and reissue its own general permit.

## OTHER

FEDERAL: EPA issued its ***EJ 2020 Action Agenda***, a strategic plan for advancing environmental justice throughout the agency for the period 2016-2020. EJ 2020 will build on the foundation established by EPA's Plan EJ 2014, which sought to integrate EJ into EPA's programs, including rulewriting, permitting, enforcement, science and law. The EJ 2020 plan identifies three broad EJ goals for 2016-2020 and breaks them out into narrower areas and more specific tasks. The three general goals are: (1) deepen EJ practice within EPA programs to improve the health and environment of overburdened communities (including, among other things, institutionalizing EJ into rulemaking; establishing a framework and tools for considering EJ in EPA-issued permits; directing enforcement resources to address pollution in overburdened communities; and routinely assessing EJ in all appropriate EPA rulemaking, permitting and enforcement actions); (2) work with partners to expand EPA's positive impact within overburdened communities (e.g., work with state, local and other governments and federal agencies and support community efforts); and (3) demonstrate progress on significant national EJ challenges, including lead disparities, drinking water, air quality (in particular, fine particle pollution), and hazardous waste sites. The EJ 2020 plan can be found on EPA's web site at: [www.epa.gov/environmentaljustice/ej-2020-action-agenda](http://www.epa.gov/environmentaljustice/ej-2020-action-agenda).

Implications: The policy will directly affect state and federal environmental regulators and may also affect entities seeking permits/approvals from EPA.

## Other Recent Developments (Proposed)

### AIR

FEDERAL: EPA is proposing to **expand the list of treated railroad ties that can be burned in boilers rather than commercial and industrial solid waste incineration (CISWI) units**. In 2011, EPA finalized a definition of non-hazardous solid waste to be used to identify whether non-hazardous secondary materials burned as fuels or used as ingredients in combustion units are solid waste and thus whether the units are regulated as CISWIs under CAA § 129 or as boilers under CAA § 112. As part of that rulemaking, EPA adopted a procedure for adding materials to the list of non-waste fuels categorically excluded from regulation as solid waste under CAA § 129. With the recent rule, EPA proposed to expand the list of non-waste fuels that can be burned in boilers to include not only creosote treated railroad ties but railroad ties treated with creosote-borate, copper naphthenate and copper naphthenate-borate provided certain conditions are met. EPA is accepting comments on the proposed rule until **January 3, 2017**; it can be found in the November 1, 2016 Federal Register at: [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).

Implications: The rule is primarily of interest to facilities hoping to burn the listed waste streams in boilers or industrial furnaces for details.



## Upcoming Deadlines

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

**December 2, 2016:** Deadline for submitting comments on EPA's proposed revisions to the PSD and Title V regulations to implement Supreme Court-mandated changes to the 2010 GHG tailoring rule. See the October 3, 2016 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**December 5, 2016:** Deadline for submitting comments on OSHA's Standards Improvement Project rulemaking eliminating/revising outdated and/or unnecessary OSHA standards. See the October 4, 2016 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**December 7, 2016:** Deadline for submitting comments on EPA's proposed rejection of a petition seeking to expand the definition of corrosive waste under the hazardous waste regulations (extended from June 10, 2016). See the April 11, 2016 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys) for details.

**January 3, 2017:** Deadline for submitting comments on EPA's proposal to add additional treated railroad ties to the list of materials that can be burned in boilers and industrial furnaces rather than CISWIs. See the November 1, 2016 Federal Register at [www.gpo.gov/fdsys](http://www.gpo.gov/fdsys).