ENVIRONMENTAL BREAKFAST CLUB
REGULATORY SUMMARY

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Final Statutes, Regulations, Guidance and Cases

Citation	Summary	Implications	Schedule/Notes
REMEDIATION			
FEDERAL **Addition of Subsurface Intrusion Component to Hazard Ranking System** 40 CFR Part 300 82 Fed. Reg. 2760 (Jan. 9, 2017)	EPA **added a subsurface intrusion (SsI) component to the Hazard Ranking System (HRS)**, the principal mechanism used to evaluate sites for placement on the National Priority List (NPL) and inclusion in the federal Superfund program. SsI covers both the intrusion of volatile chemicals from contaminated groundwater or soil into overlying structures (i.e., vapor intrusion) and direct intrusion by contaminated groundwater. According to EPA, although SsI threats are being addressed at sites already on the NPL, the agency lacks the ability to list sites because of the threat posed by SsI. As part of the rulemaking, EPA also revised 40 CFR Part 300, Appendix A, to reflect changes in terminology. The rule can be found in the January 9, 2017 Federal Register at: www.gpo.gov/fdsys.	The HRS is used by EPA to evaluate the risk or potential risk of hazardous substance sites for purposes of inclusion/ranking on the NPL. The revision authorizes EPA to consider SsI, together with the other HRS criteria, in ranking NPL sites. According to EPA, the addition of SsI to the HRS ranking system will not affect the status of sites currently on, or proposed to be added to, the NPL.	The rule takes effect February 8, 2017.
CHEMICAL			
FEDERAL **TSCA Reporting and Recordkeeping Requirements for Nanoscale Materials** 40 CFR Part 704 82 Fed. Reg. 3641 (Jan. 12, 2017)	EPA is **requiring manufacturers/processors of nanoscale materials to report certain information** under the Toxic Substances Control Act (TSCA). TSCA § 8(a), 15 USC § 2607(a), authorizes EPA to adopt rules requiring each person who manufactures, processes or proposes to manufacture or process a particular chemical to maintain such records and submit such reports as EPA may require. According to EPA, evidence suggests that there are differences between chemical substances and the same substances in nanoscale form and that certain nanoscale materials may pose a health hazard. With this notice, EPA is requiring current and future manufacturers/processors of nanoscale materials (with certain exceptions) to submit information to EPA on chemical identity, production volume, methods of manufacture and processing, exposure and release information, and available health and safety data. The data will be submitted electronically using EPA's Central Data Exchange (CDX) electronic reporting portal. The rule can be found in the January 12, 2017 Federal Register at: www.gpo.gov/fdsys.	The rule is primarily of interest to companies that manufacture and process nanoscale materials. It includes detailed criteria for identifying what chemicals are required to be reported. Separate reports will be required for each discrete form of the reportable chemical substance based on factors in addition to size. EPA emphasized that the rule is not intended to conclude that nanoscale materials will cause harm but rather to enable EPA to collect the information necessary to determine if further action under TSCA is needed.	The rule takes effect May 12, 2017.

Citation	Summary	Implications	Schedule/Notes
WATER			
FEDERAL **Issuance and Reissuance of Nationwide Permits** 33 CFR Chapter II 82 Fed. Reg. 1860 (Jan. 6, 2017)	The U.S. Army Corps of Engineers (ACOE) reissued **nationwide permits (NWPs), general conditions, and definitions**, with some modifications, and **adopted two new nationwide permits**. Individuals planning to undertake activities that will disturb wetlands or waterways frequently must obtain a permit from the ACOE. To streamline the permit approval process, the ACOE has issued NWPs for project categories that typically result in minimal disturbances. Certain NWPs require the submission of a pre-construction notification (PCN) prior to proceeding under the NWP. Major changes to the NWPs include: • Adding NWPs for removal of low-head dams and construction and maintenance of living shorelines for erosion control. • Revising NWPs for maintenance, utility line activities, bank stabilization, linear transportation projects, minor dredging, surface coal mining activities, completed enforcement actions, temporary construction, access and dewatering, maintenance dredging of existing basins, commercial and institutional developments, reshaping existing drainage ditches, stormwater management facilities, mining activities, repair of uplands damaged by discrete events, existing commercial shellfish aquaculture activities, and land-based renewable energy facilities. Several other NWPs were revised solely to clarify that any losses of stream bed are applied to the ½ acre applicability limit under the NWP. • Changing the NWP general conditions to: require a PCN for any NWP activity that will occur in a National Wild and Scenic River or designated study river; clarify the rules governing projects that may affect endangered species, critical habitat, or historic properties; clarify that permittees are responsible for ensuring compliance with the Migratory Bird Treaty Act and Bald and Golden Eagle Protection Act; and clarify the circumstance under which mitigation can be required. The ACOE also revised key definitions. The notice can be found in the January 6, 2017 Federal Register at: www.gpo.gov/fdsys.	The new/reissued nationwide permits apply to specific activities that could potentially disturb wetlands or waterways. Applicants for certain NWPs must submit PCNs and/or satisfy ACOE regional conditions and conditions imposed by the state to preserve coastal zone consistency or protect water quality (via the water quality certification process).	The new/revised NWPs take effect March 19, 2017. The New York Districts (New York and Buffalo) will issue regional conditions designed to ensure that the NWPs will not have adverse environmental impacts. The regional conditions, once finalized, can be found on the District's website at: www.nan.usace.army.mil/Missions/Regulatory/Nationwide-Permits/

Citation	Summary	Implications	Schedule/Notes
WATER			
NEW YORK STATE **ECL SPDES General Permit for Concentrated Animal Feeding Operations** Permit No. GP-0-16-001 **CWA SPDES General Permit for Concentrated Animal Feeding Operations** Permit No. GP-0-16-002	DEC **issued a pair of general permits under the State Pollutant Discharge Elimination System (SPDES) program to address wastewater associated with concentrated animal feeding operations (CAFOs)**. Both permits replace the existing CAFO general permit, which expired on June 30, 2016 but was administratively extended. The first permit, GP-0-16-001, covers CAFOs that do not discharge from their production areas to surface waters and so are not regulated by the federal Clean Water Act (CWA). The second permit, GP-0-16-002, covers CAFOs that discharge wastewater to surface waters. Both permits require preparation and implementation of nutrient management plans as well as ongoing monitoring, reporting and recordkeeping. Owners/operators of CAFOs must prepare plans, submit a notice of intent (NOI) to DEC seeking coverage under the applicable general permit, and comply with their plans and with the terms and conditions of the general permit. As with other general permits, DEC retains the option of requiring CAFOs to obtain an individual SPDES permit. Major changes to the CAFO permitting process since the previous permit was issued include: • Establishing two permits, one addressing federally regulated CAFOs (i.e., those that discharge waste to surface waters) and state-only regulated CAFOs (i.e., those that do not discharge wastewater). • Requiring public notice and comment on the NOI and farm-specific annual nutrient management plan for federally-regulated CAFOs. • Requiring advance notice to DEC whenever significant operational changes are made at the facility. • Adding conditions regulating manure spreading during winter months to prevent water quality violations when soils are saturated. • Clarifying how the “no discharge” standard applies and requiring permittees to develop and implement wet weather standard operating procedures. • Regulating discharges of non-contact cooling water from pre-coolers (cooling systems that typically use groundwater as a coolant to lower milk temperature prior to refrigeration). The CAFO general permits and related materials can be found on DEC’s website at: www.dec.ny.gov/permits/6285.html.	Coverage under the general permits is required for large, medium and small CAFOs as defined in the permits. The classification depends largely on the number and type of animal. For example, a large veal calf CAFO houses 1,000 or more veal calves while a medium CAFO houses 300 to 999 veal calves. Small CAFOs require coverage under the general permits only if specifically designated by the Department using criteria spelled out in the permits.	The permits take effect July 24, 2017. Owners/operators of existing CAFOs eligible for coverage under GP-0-16-001 (state-only CAFOs) must submit a NOI and comprehensive nutrient management plan certification to DEC within 150 days of the effective date of the final permit. Owners/operators of existing CAFOs eligible for coverage under GP-0-16-002 (federal CAFOs) must submit a NOI and annual nutrient management plan within 120 days of the effective date of the final permit for public notice and comment prior to issuance.

Citation	Summary	Implications	Schedule/Notes
OTHER			
FEDERAL **Risk Management Plan Programs under Clean Air Act** 40 CFR Part 68 82 Fed. Reg. 4594 (Jan. 13, 2017)	EPA **revised the risk management plan (RMP) regulations** contained in 40 CFR Part 68. The RMP program requires facilities storing listed hazardous substances above threshold quantities to conduct a hazard assessment and prepare a RMP. The rule distinguishes between three levels of programs with Program 2 and 3 processes subject to more rigorous planning requirements because they pose the greatest risk. Key changes include: • ***Accident prevention program revisions.*** EPA revised the rules for preventing accidental releases to require all facilities with Program 2 or 3 processes to conduct a root cause analysis after any incident that resulted or could have resulted in a catastrophic release. In addition, any Program 2 or 3 facility that has a RMP reportable incident must use an independent third party that meets certain regulatory criteria to conduct or oversee its next scheduled audit. Finally, Program 3 facilities in specified SIC codes (paper manufacturing, petroleum and coal products manufacturing, and chemical manufacturing) must evaluate safer production alternatives as part of their hazard assessment, although implementation of the changes identified is not required. • ***Emergency response enhancements.*** EPA revised the rule's emergency response provisions to require facilities with Program 2 or 3 processes to coordinate with local emergency agencies at least once a year to clarify response needs, emergency plans, and roles and responsibilities. In addition, EPA is requiring these facilities to conduct emergency notification exercises annually, field exercises at least every ten years, and tabletop exercises at least every three years, subject to various exceptions. • ***Enhanced availability of information.*** The rule requires all RMP facilities to provide certain basic information to the public upon request and to hold a public meeting within 90 days of a reportable accident. However, EPA dropped a proposal requiring a subset of facilities to provide local emergency response authorities with summaries of certain key program components. Instead, facilities are expected to share certain information during the annual meetings discussed above. The rule can be found in the January 13, 2017 Federal Register at: www.gpo.gov/fdsys.	The rule is primarily of interest to facilities required to prepare RMPs. In the wake of several high profile chemical accidents, President Obama issued Executive Order 13650, entitled *Improving Chemical Facility Safety and Security*, which required OSHA to publish a request for information to identify issues relating to modernization of its process safety management (PSM) standards. Because the RMP and PSM standards share certain common requirements, EPA published a request for information (RFI) in July 2014 seeking feedback from the public on possible changes to the RMP rule. The rulemaking reflects information/comments received following the RFI and proposed rule. EPA sought comments on a wide range of alternatives to its proposed changes as part of the rulemaking.	The rule takes effect March 14, 2017.

Proposed Laws, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
REMEDIATION			
FEDERAL **Financial Responsibility Requirements under CERCLA § 108(b)** 40 CFR Part 320 82 Fed. Reg. 3388 (Jan. 11, 2017) (general CERCLA financial responsibility requirements and requirements for certain hardrock mining facilities); 82 Fed. Reg. 3512 (Jan. 11, 2017) (notice of intent to proceed with financial responsibility rulemakings for chemical, petroleum, and electric power industries)	EPA **proposed to adopt a new regulation establishing financial responsibility requirements under section 108(b) of the Comprehensive Environmental Response, Compensation and Liability Act** (CERCLA). Section 108(b) requires EPA to develop regulations requiring certain classes of facilities to establish evidence of financial responsibility and providing for publication of a "priority notice" identifying the classes of facilities to be regulated first. The goal of the statute/regulation is to ensure that the costs associated with releases of hazardous substances from facilities, including response costs, health assessment costs, and natural resource damages, are borne by the responsible party, not the taxpayer. Under newly proposed 40 CFR Part 320, owners and operators of facilities subject to the rule would be required to: notify EPA that the rule applies; calculate a level of financial responsibility for their facility using a formula provided in the rule (and provide supporting documentation for the calculation); obtain a financial responsibility instrument or potentially qualify to self-insure; provide evidence of financial responsibility to EPA; and update and maintain financial responsibility until EPA releases the owner or operator from CERCLA § 108(b) responsibility. Acceptable financial responsibility instruments include a letter of credit, insurance, trust fund, or surety bond. In addition, EPA is considering allowing use of a stringent, credit rating-based financial test and corporate guarantee. The rule also establishes conditions for payment of funds from the financial responsibility instruments. As part of the same rulemaking, EPA also proposed to establish specific financial responsibility requirements applicable to certain classes of mines and associated mineral processing facilities—the first class of activity designated for development of financial assurance requirements by EPA. In a second notice, EPA announced its intention to publish a notice of proposed rulemaking on financial assurance requirements for three additional industries: chemical manufacturing, petroleum and coal products manufacturing, and electric power generation, transmission and distribution. The proposed rule and notice of intent to proceed can be found in the January 11, 2017 Federal Register at: www.gpo.gov/fdsys.	The proposed rule is of greatest interest to owners/operators facilities engaged in hardrock mining—the extraction of materials that contain target metallic or non-fuel non-metallic minerals (e.g., gold, copper, iron ore, nickel, sulfur). EPA has identified approximately 221 facilities that will be subject to the rule but emphasized that the population of mines and mineral processing facilities operating at any given point in time may fluctuate significantly. More generally, the rule could potentially affect numerous other industries that have historically given rise to Superfund liability, including those identified for further rulemaking under CERCLA § 108(b) (chemical, petroleum/coal and electric power).	EPA is accepting comments on the proposed rule until **March 13, 2017**. EPA published a priority notice for the hard rock mining category in 2009 and agreed on a court-ordered schedule for issuing a final rule by December 1, 2017. With respect to chemical manufacturing, petroleum/coal manufacturing and electricity generation. EPA agreed to a tiered schedule for completing the rulemaking process for these industries in settlement of litigation.

Citation	Summary	Implications	Schedule/Notes
CHEMICAL			
FEDERAL **TSCA Reform Implementation Regulations** 40 CFR Parts 702 and 710 82 Fed. Reg. 4255 (Jan. 13, 2017) (inventory notification active/inactive status); 82 Fed. Reg. 4825 (Jan. 17, 2017) (procedures for prioritization of chemicals for risk evaluation)	EPA proposed **a pair of regulations implementing key requirements of the 2016 TSCA reform statute relating to the identification of active/inactive chemicals and the prioritization of chemicals for review**. The original TSCA statute focused on assessing chemicals before they entered the marketplace and contained few provisions for evaluating the risks of "grandfathered" chemicals. The 2016 TSCA reform statute requires EPA to systematically prioritize and assess existing chemicals. In conjunction with that process, EPA proposed a rule for identifying chemicals that have not been manufactured recently and can therefore be dropped from the TSCA inventory. Within 180 days of publication of the final rule, manufacturers must notify EPA of each chemical substance on the TSCA inventory that was manufactured for non-exempt commercial purposes during the 10-year period preceding enactment of the TSCA reform statute. If EPA receives a notice, the chemical is considered active and may potentially be subject to further TSCA review. Otherwise, the chemical is assumed to be inactive and cannot be produced without first notifying EPA. The second rule implements a process for prioritizing chemicals as high or low priority for purposes of deciding whether to conduct a risk evaluation. The process, which is intended to take between 9 and 12 months, consists of four steps: (1) ***Pre-prioritization.*** During this phase, EPA must review existing information to identify candidates for high-priority designations using a risk-based process. The rule incorporates certain statutory preferences and establishes criteria for narrowing the field of potential candidates. (2) ***Initiation.*** Once a chemical has been selected, EPA will initiate the formal prioritization process by publishing a Federal Register notice and commencing a 90-day public comment period for gathering additional information. (3) ***Proposed priority designation.*** After the close of the comment period, EPA will review the information and propose whether to designate the chemical as high or low priority. If there is insufficient information, the chemical will be designated high priority. The proposed designation will be made available for a second 90-day public notice and comment period. (4) ***Final priority designation.*** After the close of the public comment period, EPA will designate the chemical high or low priority, marking the beginning of the formal risk evaluation for high priority chemicals. The proposed rules can be found in the January 13, 2017 and January 17, 2017 Federal Registers, respectively, at: www.gpo.gov/fdsys.	The proposed rules are potentially of interest to companies that manufacture, import, process, distribute, use or dispose of chemicals. Under the amended TSCA statute, EPA has approximately one year to decide whether to conduct a risk evaluation and three years to complete the evaluation and decide whether the chemicals present an unreasonable risk to humans and/or the environment. If EPA determines that a particular substance poses an unreasonable risk, EPA must mitigate that risk within two years. The active/inactive rule establishes procedures for identifying chemicals that are no longer being manufactured and so do not necessitate prioritization. The prioritization rule establishes the criteria and timeframes for identifying high priority chemicals that require a risk evaluation. The risk evaluation rule (see below) establishes procedures for completing the actual risk evaluation process.	EPA is accepting comments on the active/inactive rule until **March 14, 2017**. The deadline for submitting comments on the chemical prioritization regulation is **March 20, 2017**.

Citation	Summary	Implications	Schedule/Notes
CHEMICAL			
FEDERAL **TSCA Reform Implementation Regulations** 40 CFR Part 702 82 Fed. Reg. 7562 (Jan. 19, 2017) (procedure for chemical risk evaluation)	As a companion to the proposed rule for prioritizing chemicals for review, EPA **proposed a rule establishing the process for conducting risk evaluations to determine whether a chemical substance presents an unreasonable risk of injury to heath or the environment** and must therefore be mitigated. TSCA requires EPA to evaluate the risks associated with: (1) the first 10 chemicals identified from the 2014 TSCA work plan update for immediate review; (2) chemicals identified as "high priority" via the prioritization process; and (3) chemicals identified by manufacturers for review. The regulation outlines the steps for submitting a manufacturer request for risk evaluations, including the method/content of the submission, public notice (including a minimum 30-day public comment period); and EPA determination (required within nine months of the end of the comment period). If EPA concludes that it has sufficient information after the review, it will begin the risk evaluation. If additional information is necessary, the applicant must provide it or the request to initiate risk evaluation will be deemed withdrawn. Each risk evaluation must include the following components: • ***Scope.*** Identification of the conditions of use of the chemical, hazards, exposures, and potentially exposed or susceptible subpopulations that EPA expects to consider. Notice of the scope must be published in the Federal Register within 6 months of initiation of the risk evaluation and is subject to a 45-day public notice and comment period. • ***Hazard assessment.*** Identification of the types of adverse health or environmental effects that can be caused by the chemical and the quality and weight of evidence supporting the identification. • ***Exposure assessment.*** Identification of the likely duration, intensity, frequency, and number of exposures under the conditions of use. • ***Risk characterization.*** Integration of information on hazards and exposures to convey the nature and presence or absence of risks, along with information about how the risk was assessed, where assumptions and uncertainties still exist, and where policy choices need to be made, including peer review. • ***Risk evaluation/determination.*** EPA's draft risk evaluation will be published in the Federal Register and subject to a 30-day public comment period. EPA must publish the final risk evaluation no later than three years after the start of the evaluation process with a possible six-month extension. The proposed rule can be found in the January 19, 2017 Federal Register at: www.gpo.gov/fdsys.	See discussion of prioritization process above.	EPA is accepting comments on the risk evaluation rule until **March 20, 2017**.

Citation	Summary	Implications	Schedule/Notes
CHEMICAL			
FEDERAL **TSCA: Prohibition Against Certain Uses of Trichloroethylene, Methylene Chloride, and N-Methylpyrrolidone** 40 CFR Part 751 82 Fed. Reg. 7432 (Jan. 19, 2017) (trichloroethylene); 82 Fed. Reg. 7464 (Jan. 19, 2017) (methylene chloride and N-methylpyrrolidone)	EPA **proposed a pair of rules prohibiting certain uses of trichloroethylene (TCE), methylene chloride and N-methylpyrrolidone (NMP)** after finding that they present an unreasonable risk of injury to health. All three chemical substances were listed in EPA's 2014 update to its TSCA work plan for chemical assessments and were the subject of completed risk assessments published before Congress enacted the TSCA reform statute. The statute expressly authorizes EPA to issue rules under the pre-reform provisions of TSCA 6(a) consistent with the scope of the completed risk assessment. With respect to TCE, EPA determined that the use of TCE in vapor degreasing presents an unreasonable risk of health. To address that risk, EPA is proposing to: prohibit the manufacture (including import), processing, and distribution in commerce of TCE for use in vapor degreasing; prohibit the commercial use of TCE in vapor degreasing; require manufacturers, processors and distributors, except retailers, to provide downstream notification of these prohibitions; and require basic recordkeeping. EPA proposed a similar series of prohibitions and requirements targeted at the use of methylene chloride and NMP for consumer and most commercial paint and coating removal. Both the methylene chloride and NMP rules exclude formulations manufactured specifically for the Department of Defense and impose limits on the size of the containers used to distribute the chemicals to prevent diversion to restricted uses. In the case of NMP, EPA is taking comments on an alternative approach that would: prohibit the distribution in commerce and commercial use of paint stripping products containing more than 35% NMP (except for products used for critical national security purposes); require product formulators to test and identify specialized gloves to use with the product; require product formulators to label products, prepare safety data sheets, and take other measures to inform users about the risks and instruct them on risk reduction methods; and require commercial users to establish worker protection programs. The proposed regulations can be found in the January 19, 2017 Federal Register at: www.gpo.gov/fdsys.	The proposed rules are potentially of interest to companies that manufacture, import, process, distribute, or use TCE in vapor degreasing equipment and methylene chloride and NMP as a paint stripper. EPA adopted the prohibitions after concluding that there were less dangerous alternatives/substitutes available. EPA previously issued a separate proposal to prohibit the manufacture, processing, distribution in commerce and use of TCE in aerosol degreasing and in spot cleaning in dry cleaning facilities. EPA intends to publish a final rule covering both TCE proposals. EPA intends to issue a separate proposal on methylene chloride in paint and coating removal in commercial furniture refinishing and to issue a final rule covering both methylene chloride proposals.	EPA is accepting comments on the proposed TCE regulation until **March 20, 2017**. The deadline for submitting comments on the methylene chloride/NMP regulation is **April 19, 2017**.

Citation	Summary	Implications	Schedule/Notes
WATER			
FEDERAL **Public Notification Requirements for Combined Sewer Overflows to the Great Lakes Basin** 40 CFR Parts 122 and 123 82 Fed. Reg. 4233 (Jan. 13, 2017)	EPA proposed a rule to implement section 425 of the Consolidated Appropriations Act of 2016, which requires EPA to work with the Great Lakes states to **establish public notification requirements for combined sewer overflow (CSO) discharges to the Great Lakes** for purposes of limiting public exposure to raw sewage in lakes and rivers after storm events. The proposed regulation requires CSO operators in the Great Lakes Basin to implement the following measures: • Install signs at CSO outfalls and potentially impacted public access areas to raise public awareness of the potential for CSO discharges and impacts. The regulation specifies sign location, content and maintenance requirements and requests comment on other issues. • Notify the local health department (or state health department if there is no local health department) and any potentially affected public entity of CSO discharges as soon as possible but no later than four hours after discovery as determined by monitoring, modeling or other means of detection. • Notify the public of CSO discharges via text alerts, social media, posting on website, or other appropriate means within four hours of discovery as outlined above. The proposed rule requires the same minimum information for both notices. • Prepare an annual notice by May 1st of each year summarizing information about CSO discharges for the previous year and the steps taken to implement the long-term CSO control plan. • Prepare a public notification plan to provide system-specific detail describing the discharger's public notification efforts. The rule will be implemented directly by EPA in the short term under regulations set forth at 40 CFR § 122.38. Ultimately, the public notice requirements for CSOs discharging to the Great Lakes Basin will be incorporated into NPDES permits when such permits are reissued. The proposed rule can be found in the January 13, 2017 Federal Register at: www.gpo.gov/fdsys.	The proposed rule is primarily of interest to municipalities that operate CSOs in the Great Lakes Basin. The statute and proposed regulation establish uniform notification requirements for CSOs discharging to the Great Lakes Basin. As set forth in the preamble to the proposed regulation, New York already has requirements in place that meet most of the key aspects of the notification rule.	EPA is accepting comments on the proposed regulation until **March 14, 2017**.

Citation	Summary	Implications	Schedule/Notes
WATER			
FEDERAL **Periodic Review of National Primary Drinking Water Regulations** 40 CFR Part 141 82 Fed. Reg. 3518 (Jan. 11, 2017)	EPA requested comments on the **results of its periodic review of existing National Primary Drinking Water Regulations (NPDWR)**, identifying eight substances as possible candidates for regulatory revisions. The Safe Drinking Water Act requires EPA to establish NPDWRs for pollutants commonly found in public drinking water supplies and review those regulations every six years. EPA completed a detailed review of 76 of the 88 NPDWRs established to date and identified eight NPDWRs as candidates for regulatory revision. These candidates fall into two categories: Disinfectants/Disinfection Byproducts Rules (chlorite, haloacetic acids (five), and total trihalomethanes) and Surface Water Treatment Rules (giardia lamblia, heterotrophic bacteria, legionella, viruses and cryptosporidium). In identifying these pollutants, EPA concluded that the revision presents a meaningful opportunity to improve the level of public health protection and/or achieve cost savings while maintaining/improving public health protection. Of the 68 remaining substances, EPA preliminarily concluded that no action was appropriate at this time because: a health effects assessment is in process or EPA has nominated the contaminant for a health assessment (19 NPDWRs); there is no new information and the NPDWR remains appropriate after review (18 NPDWRs); or no new information is available to support changes and/or no meaningful opportunity exists for a health risk reduction or for cost savings while maintaining/improving public health protection (31 NPDWRs). The remaining 12 of the 88 NPDWRs were or continue to be addressed in recently completed, ongoing, or pending regulatory actions and so are not subject to the six-year review. The notice can be found in the January 11, 2017 Federal Register at: www.gpo.gov/fdsys.	The NPDWR notice is primarily of interest to municipalities and other public water suppliers.	EPA is accepting comments on its NPDWR review until **March 13, 2017**.

Other Recent Developments (Final)

AIR

FEDERAL: EPA **streamlined, strengthened and clarified key aspects of the regional haze rule**, which requires states to implement planning and other measures to reduce emissions of pollutants that impair visibility and track progress toward achieving natural background conditions. Major changes to the regional haze rule include: (1) reorganizing the requirements for comprehensive periodic revisions to regional haze state implementation plans (SIPs) to more closely track the planning process (calculation of baseline, current and natural visibility conditions; development of a long-term regional haze strategy; regional scale modeling of projected emissions to establish reasonable progress goals; and monitoring to determine whether goals are being achieved); (2) specifying that all progress toward achieving goals under the regional haze program must be measured from 2000-2004 baseline visibility conditions; (3) clarifying how to measure progress when evidence indicates that a SIP will not achieve natural visibility conditions by the 2064 Clean Air Act deadline due to international manmade emissions; (4) specifying that when assessing progress states should focus on anthropogenic (manmade) visibility impairment and omit days dominated by uncontrollable visibility impacts due to phenomena such as wildfires; (5) significantly revising/updating the provisions relating to reasonably attributable visibility impairment (i.e., "plume blight"), including expanding the requirements to all states and territories with certain limited exceptions; (6) expanding the requirements for consultation with federal land managers; (7) adding/revising key definitions; and (8) extending the next regional haze SIP deadline from 2018 to 2021. The rule, which took effect January 10, 2017, can be found in the Federal Register issued on that date at: www.gpo.gov/fdsys.

Implications: The rule is primarily of interest to DEC and other state agencies that are responsible for regional haze planning.

FEDERAL: EPA **denied petitions for reconsideration and an administrative stay of the Clean Power Plan (CPP) rule**, EPA's controversial program to reduce emissions of carbon dioxide from existing fossil fuel-fired power plants. Under the CAA, EPA will grant reconsideration when a petitioner can show that the grounds for the objection arose after the public comment period and that resolution is of central relevance to the outcome of the rule. In this case, the agency found, among other things, that: many of the issues were addressed during the public comment period; certain provisions were the result of comments received during the public comment period and so do not require further review; and the new information or objections were not of central relevance. Notice of the denial can be found in the January 17, 2017 Federal Register at: www.gpo.gov/fdsys.

Implications: The notice is primarily of interest to owners/operators of existing power plants and to states required to develop plans to implement the CPP.

BULK STORAGE/REMEDIATION

NEW YORK STATE: DEC adopted a fifth emergency rule to provide it with the tools to **address the discovery of perfluorooctanoic acid (PFOA) and related substances in drinking water wells** in Hoosick Falls and elsewhere. In January 2016, DEC adopted an

emergency rule adding PFOA-acid to the list of hazardous substances regulated under the chemical bulk storage (CBS) program. Amending 6 NYCRR Part 597 to include PFOA allows DEC to regulate the bulk storage of the chemical under the CBS program and require reporting of PFOA releases. More important, adding PFOA to the Part 597 list allows DEC to address PFOA-contaminated sites under the State Superfund program, which defines "hazardous waste" to include both traditional hazardous wastes and any hazardous substance listed in Part 597. In April 2016, DEC adopted a new emergency rule, that added perfluorooctane sulfonic acid (PFOS-acid) and PFOA and PFOS salts to the list of hazardous substances and set a deadline of April 25, 2017 for facilities to dispose of fire-fighting foam containing these substances. At the same time, DEC proposed a permanent rule for comment. The recent rulemaking is the fourth emergency rule addressing PFOA and PFOS acids and salts. The recent emergency rule, which is effective until March 12, 2017, can be found on DEC's website at: www.dec.ny.gov/regulations/104968.html.

Implications: The rule is primarily of interest to facilities that previously manufactured, processed or used PFOA and PFOS. These substances have been widely used in fire-fighting foam, Teflon, stain-resistant carpeting, and semi-conductor coatings, among other uses.

WATER

NEW YORK STATE: DEC issued the ***New York Ocean Action Plan 2017-2027***, which outlines the state's program for protecting and restoring its ocean resources. The plan identifies four basic goals with a series of objectives for each goal. The four goals are: (1) ensuring the ecological integrity of the ocean ecosystem; (2) promoting economic growth, coastal development and human use of the ocean in a manner that is sustainable and consistent with maintaining ecosystem integrity; (3) increasing resilience of ocean resources to impacts associated with climate change; and (4) empowering the public to actively participate in decision-making and ocean stewardship. The goals and objectives are intended to establish a framework for 61 strategic actions that should be implemented in the short term (within two years), the near term (within five years) and long term (within 10 years). The plan was developed using "ecosystem-based management," a comprehensive integrated approach to natural resource management that considers the entire ecosystem, including humans. The plan can be found on DEC's website at: www.dec.ny.gov/lands/84428.html. In a related development, Governor Cuomo signed legislation to establish the New York State Ocean Acidification Task Force, which is charged with preparing an assessment of the impacts of ocean acidification.

Implications: The plan is directly of interest to individuals, businesses and governments located along New York's coast.

OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: The Occupational Safety and Health Administration (OSHA) adopted major **changes to its existing permissible exposure limits (PEL) for beryllium**, together with additional work practice, equipment and other requirements designed to protect workers from the adverse health effects of beryllium exposure. The beryllium PEL was adopted in 1971 and had not been updated despite increasing

evidence of the cancer and other health risks associated with beryllium. With this rulemaking, OSHA reduced the time-weighted PEL for beryllium from 2.0 micrograms per cubic meter ($\mu g/m^3$) of air to 0.2 $\mu g/m^3$ in general industry and required compliance with ancillary requirements relating to exposure assessment, personal protective clothing and equipment, medical surveillance, medical removal, training, and regulated areas or access controls. The rule takes effect March 10, 2017; it can be found in the January 9, 2017 Federal Register at: www.gpo.gov/fdsys. Employers have one year after the effective date of the rule to implement most provisions of the standards.

Implications: According to OSHA, about 62,000 workers will be affected by the beryllium standards. Beryllium is primarily used in specialty alloys and beryllium oxide ceramics and composites with industrial applications such as consumer electronics components and satellite communication modules.

Other Recent Developments (Proposed)

AIR

FEDERAL: EPA **proposed to deny a petition from the states in the Northeast Ozone Transport Region (OTR) to include nine upwind states in the region** after finding that other CAA provisions provide a better alternative for addressing interstate ozone transport. Under the CAA, the 12 states in the OTR must comply with certain nonattainment new source review, reasonably available control technology and other requirements designed to reduce emissions of volatile organic compounds (VOCs) and nitrogen oxides (NOx), the primary ozone precursors. Over the years, the OTR states have continued to experience ozone nonattainment despite implementing these and other measures and have blamed the problem, in part, on emissions from upwind states. In 2013, the OTR states petitioned EPA to add eight states to the OTR under authority granted by the CAA. EPA proposed to deny the petition after concluding that other CAA provisions provide a better alternative for states and EPA to develop a "targeted remedy" to address interstate ozone transport. In particular, EPA pointed to the various programs adopted under the so-called "good neighbor" provisions of the CAA, including CAA § 110(a)(2)(D)(i)(I), which prohibits certain emissions from in-state sources if they impact air quality in downwind states. Programs adopted under this authority include the Cross-State Air Pollution Rule NOx cap-and-trade program and its predecessors. EPA also pointed to other federal and state rules that directly limit NOx and VOC emissions from both stationary and mobile sources as a better way of addressing ozone transport. EPA is accepting comments on its proposed denial of the petition until **February 21, 2017**; the notice can be found in the January 19, 2017 Federal Register at: www.gpo.gov/fdsys.

Implications: If the petition is denied, the states covered by the petition will not be required to implement the basic VOC/NOx emission control provisions required for OTR states such as New York.

FEDERAL: EPA is **accepting comment on its determination that n-propyl bromide (nPB) may reasonably be anticipated to cause adverse health effects** and should therefore be added to the list of hazardous air pollutants (HAP) regulated under CAA § 112, 42 USC § 7412. The determination, if finalized, would pave the way for EPA to consider nPB when setting maximum achievable control

technology standards for major sources under the National Emission Standards for Hazardous Air Pollutants (NESHAP) program. CAA § 112(b)(3)(A) allows any person to petition EPA to add a pollutant to the list of HAPs. Once the petition is deemed complete, EPA must decide whether "emissions, ambient concentrations, bioaccumulation or deposition of the substance are known to cause or may reasonably be anticipated to cause adverse effects to human health or adverse environmental effects." The initial petition was filed by the Halogenated Solvent Industry Alliance (HSIA), which argued that nPB was being marketed as a safe, unregulated alternative to chlorinated solvents despite studies showing that it may cause cancer in rats and mice. DEC followed up a year later with its own petition. After reviewing available data, EPA found documented evidence of the adverse health effects of nPB including carcinogenicity, reproductive toxicity and neurotoxicity. With the current rulemaking, EPA is inviting the public to comments on its decision to list nPB as a HAP. EPA is accepting comment on the proposed determination until **March 10, 2017**; it can be found in the January 9, 2017 Federal Register at: www.gpo.gov/fdsys.

Implications: nPB is an increasing popular solvent used in vapor degreasing, adhesive spray applications, dry cleaning and industrial solvent sprays.

NEW YORK STATE: DEC **made available for comment draft guidance on issuing variances under the recently adopted distributed generation (DG) rule**. The DG rule applies to certain stationary reciprocating or rotary internal combustion engines that feed the distribution grid or produce electricity for use at host facilities. The rule, set forth at 6 NYCRR Part 222, imposes NOx emission standards, registration/permitting, emission testing, tuneup and other requirements on DG sources used to reduce energy costs or ensure a reliable energy supply (so-called "economic dispatch sources"). Sources that cannot meet the NOx emission limits have five alternative compliance options, including obtaining a source-specific variance. DEC's recent guidance—DAR-21, *Economic and Technical Analysis for Variances Pursuant to Subdivision 222.5(a) of Part 222*, sets forth the process for obtaining a variance, describing the standards for assessing economic and technical feasibility, the applicable permitting requirements (including the requirement that variances be reevaluated upon permit renewal), and the information required as part of a variance application. DEC is accepting comment on the draft guidance until **February 17, 2017**; it can be found on DEC's website at: www.dec.ny.gov/chemical/108935.html.

Implications: The draft guidance is primarily of interest to owners of economic dispatch DG sources subject to the new Part 222 DG rule.

WATER

FEDERAL: EPA **proposed regulations lowering the acceptable content of lead in plumbing fixtures and making other changes** to implement the Reduction of Lead in Drinking Water Act of 2011 (RLDWA). As the recent experience in Flint, Michigan, clearly illustrates, lead in plumbing poses a serious potential risk to drinking water quality. Although the Safe Drinking Water Act already prohibits the use of plumbing fixtures that are not lead free for providing drinking water, the RLDWA revised the implementing statute to lower the allowable maximum lead content from 8.0 percent to a weighted average of 0.25 percent of the wetted surfaces of plumbing products and establish a method for calculating lead content. The recently proposed regulation incorporates these standards into the

SDWA regulations at 40 CFR Parts 141 and 143, including statutory exemptions for pipes and fittings used exclusively for non-potable services such as manufacturing, industrial processing, and irrigation. EPA also proposed labeling requirements to identify products required to meet the lead-free standard. EPA is accepting comments on the proposed regulation until **April 17, 2017**; it can be found in the January 17, 2017 Federal Register at: www.gpo.gov/fdsys.

Implications: The draft regulations are of interest to anyone engaged in manufacturing or installing plumbing fixtures.

OTHER

FEDERAL: EPA **proposed to add natural gas processing (NGP) facilities to the list of industrial sectors subject to the Toxics Release Inventory (TRI) program**. Under Section 313 of the Emergency Planning and Community-Right-to-Know Act, facilities with 10 or more full-time employees (or equivalent) 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. Although NGP facilities that primarily recover sulfur from natural gas are already potentially required to report under TRI, with this rulemaking, EPA is proposing to extend the reporting requirements to all facilities in NAICS Code 211112, Natural Gas Liquid Extraction, that otherwise meet the TRI applicability requirements. After reviewing the industry, EPA concluded that TRI-listed chemicals are present at NGP facilities in quantities exceeding the TRI thresholds and that requiring TRI reporting would provide significant release and waste management data, justifying inclusion of the NGP processing sector on the list. EPA is accepting comments on the proposed rule until **March 7, 2017**; it can be found in the January 6, 2017 Federal Register at: www.gpo.gov/fdsys.

Implications: The rule is potentially of interest to NGP facilities—facilities that receive raw gas from a gathering system and prepare it to meet pipeline and other specifications by extracting heavier hydrocarbons and contaminants from the gas. EPA estimates that at least 282 NGP facilities would potentially be subject to TRI reporting if the regulation is adopted.

Regulatory Agenda

DEC published its **regulatory agenda for 2017**. The agenda identifies the regulatory changes DEC may pursue in the upcoming year. Key items on the agenda include:

- **6 NYCRR Part 182, Endangered and Threatened Species:** Revise regulation to: clarify and simplify language regarding issuance of certain special licenses associated with possession, sale and transport of endangered species and require licensing for sale and distribution of elephant and mammoth ivory and rhinoceros horn; update list of endangered/threatened species; and improve jurisdictional determination and permit review processes.
- **6 NYCRR Part 203: Oil and Gas Sector Emissions:** New rule to reduce criteria pollutant and methane emissions from the oil and gas sector that addresses and expands on EPA control technique guideline issued for the industry.
- **6 NYCRR Part 205, Architectural and Industrial Maintenance Coatings:** Include additional and more restrictive limits on VOC content.

- **6 NYCRR Subpart 225-2, Fuel Composition and Use:** Remove out-of-date regulatory references and work practices; update waste oil constituent limits; and expand the number of facilities allowed to burn waste oil. NOTE: DEC proposed the revisions to this rule in 2016.
- **6 NYCRR Part 226, Solvent Metal Cleaning Processes.** Remove out-of-date regulatory references, update work practices and establish requirements that meet the federal control techniques guideline for industrial cleaning solvents.
- **6 NYCRR Subpart 227-1, Stationary Combustion Installations:** Remove out-of-date regulatory references and update permissible emission rates for particulate matter.
- **6 NYCRR Part 230, Gasoline Dispensing Sites and Transport Vehicles:** Update and clarify testing requirements for gas stations; conform various provisions to new federal requirements and guidance; require prior notification to DEC for each test; require new vapor leak detection equipment; and delete Stage II VOC control equipment requirements currently applicable downstate.
- **6 NYCRR Part 232, Perchloroethylene Dry Cleaning Facilities:** Update and revise rule to ensure consistency with federal requirements and improve compliance and program delivery; reduce solvent emissions; address changes in technology and industry generally; and require phaseout of perc in dry cleaning machines by December 31, 2027.
- **6 NYCRR Part 235, Consumer Products:** Implement additional VOC product content limits.
- **6 NYCRR Part 247, Outdoor Wood Boilers:** Update rule to conform to federal emission standards and certification requirements of federal New Source Performance Standard.
- **6 NYCRR Part 325, Pesticide Application:** Add rules relating to use of EPA-exempt pesticides; incorporate changes to the federal certification and training regulations; and update the current pesticide use regulations.
- **6 NYCRR Part 367, Returnable Beverage Containers:** Revise regulations to incorporate statutory changes, address changes in the beverage industry, and make other changes/improvements that will lead to improved compliance and enforcement.
- **6 NYCRR Part 368, Product Stewardship and Labeling:** Rename regulation; conform recycling emblem regulations with national labeling guidelines; and develop regulations implementing recent laws addressing mercury-added consumer products and electronic waste.
- **6 NYCRR Parts 370-374, 376, Hazardous Waste Management:** Incorporate changes to the federal hazardous waste regulations adopted since January 2002 and make various state-initiated changes and corrections. DEC also is considering adopting four recent federal rules relating to solvent-contaminated wipes, carbon dioxide sequestration, electronic manifests, and the management of certain secondary materials.
- **6 NYCRR Part 375, Environmental Remediation Programs:** Provide additional direction on issues encountered since the rule was adopted; implement changes to the program enacted by the Legislature in 2015; incorporate soil cleanup objective changes; consider possible changes to the definition of “significant threat” under the Superfund program; consider opportunities to incorporate sustainable remediation and development techniques into cleanup projects; and make other changes and corrections.

- **6 NYCRR Parts 420, 421, 422, 423, 425, Mineral Resources:** Revise regulations to expand definitions, amend permitting requirements, revise and expand mined land-use plan requirements, replace term "bond" with "financial security," and update civil penalties.
- **6 NYCRR Part 492, Climate Smart Community Projects:** New regulation establishing eligible expenditures and procedures governing commitment and disbursement of funds associated with climate smart projects and establish application procedure, review processes, and project approval guidelines and criteria.
- **6 NYCRR Parts 596-599, Chemical Bulk Storage (CBS); Parts 610-611, Major Oil Storage Facilities (MOSF); Part 613, Petroleum Bulk Storage (PBS):** As part of phase 2 of its bulk storage rulemaking, DEC plans to: incorporate changes to the federal underground storage tank regulations to ensure federal/state consistency; ensure consistency between PBS and CBS regulations, where appropriate; incorporate MOSF requirements currently found in New York Department of Transportation regulations; incorporate procedures currently contained in DEC guidance relating to MOSF licensing; enhance MOSF monitoring, maintenance, procedures and equipment to prevent leaks and spills; and incorporate Navigation Law requirements into the MOSF petroleum remediation regulations.
- **6 NYCRR Part 617, State Environmental Quality Review Act (SEQRA):** Modify lists of Type I and Type II actions and make other changes to streamline the SEQRA process.
- **6 NYCRR TBD, Waste Water Reuse:** New rule to address statutes relating to water efficiencies and promotion of the reuse of reclaimed wastewater.
- **6 NYCRR TBD, Water Well Registration and Reporting:** New rule to establish registration, reporting, certification and enforcement provisions for water wells.
- **6 NYCRR Parts 700-706, Water Quality Standards:** Revise regulation to add/revise water quality standards, standard-setting procedures, and other regulatory provisions.
- **6 NYCRR Part 750:** Incorporate new SPDES standards and criteria and make other changes.

The 2017 Regulatory Agenda can be found on DEC's website at: www.dec.ny.gov/regulations/36816.html.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

February 8, 2017: Deadline for submitting comments on DEC's draft *Tidal Wetlands Guidance Document: Living Shoreline Techniques in the Marine District of New York State.* See DEC's website at www.dec.ny.gov/lands/4940.html for details.

February 13, 2017: Deadline for submitting comments on EPA's proposed rule implementing the 2015 ozone NAAQS (extended from January 17, 2017). See the November 17, 2016 Federal Register at www.gpo.gov/fdsys for details.

February 14, 2017: Deadline for submitting comments on EPA's proposed regulation of certain TCE uses under TSCA. See the December 16, 2016 Federal Register at www.gpo.gov/fdsys for details.

February 16, 2017: Deadline for submitting comments on EPA's proposed revisions to the Renewable Fuel Standards regulation (extended from January 17, 2017). See the November 16, 2016 Federal Register at www.gpo.gov/fdsys for details.

February 17, 2017: Deadline for submitting comments on DEC's draft guidance entitled *Economic and Technical Analysis for Variances Pursuant to Subdivision 222.5(a) of Part 222*, which can be found on DEC's website at www.dec.ny.gov/chemical/108935.html.

February 21, 2017: Deadline for submitting comments on EPA's proposed denial of petition to add eight states to the Northeast Ozone Transport Region. See the January 19, 2017 Federal Register at www.gpo.gov/fdsys for details.

February 24, 2017: Deadline for submitting comments on EPA's proposed residual risk/periodic technology review findings for the nutritional yeast NESHAP (extended from February 13, 2017). See the December 28, 2016 Federal Register at www.gpo.gov/fdsys for details.

February 27, 2017: Deadline for submitting comments on EPA's proposed residual risk/periodic technology review findings for the POTW NESHAP. See the December 27, 2016 Federal Register at www.gpo.gov/fdsys for details.

February 28, 2017: Deadline for submitting comments on EPA's proposed residual risk/periodic technology review for the NESHAP governing chemical recovery combustion sources at kraft, soda, sulfite and stand-alone semichemical pulp mills. See the December 30, 2016 Federal Register at www.gpo.gov/fdsys for details.

March 7, 2017: Deadline for submitting comments on EPA's proposal to add natural gas processing facilities to the list of industrial sectors subject to TRI reporting. See the January 6, 2017 Federal Register at www.gpo.gov/fdsys for details.

March 10, 2017: Deadline for submitting comments on EPA's determination that n-propyl-bromide may reasonably be anticipated to cause adverse health effects and so should be added to the list of hazardous air pollutants regulated under the NESHAP program. See the January 9, 2017 Federal Register at www.gpo.gov/fdsys for details.

March 13, 2017: Deadline for submitting comments on EPA's proposed CERCLA financial responsibility regulations, as well as specific financial responsibility requirements for certain hardrock mining facilities. See the January 11, 2017 Federal Register at www.gpo.gov/fdsys for details.

March 13, 2017: Deadline for submitting comments on the results of EPA's review of the NPDWR and identification of standards for review and possible regulatory revision. See the January 11, 2017 Federal Register at www.gpo.gov/fdsys for details.

March 14, 2017: Deadline for submitting comments on EPA's proposed regulations for identifying active/inactive chemicals under TSCA. See the January 13, 2017 Federal Register at www.gpo.gov/fdsys for details.

March 14, 2017: Deadline for submitting comments on EPA's proposed rule implementing public notification requirements for CSOs to the Great Lakes Basin. See the January 13, 2017 Federal Register at www.gpo.gov/fdsys for details.

March 20, 2017: Deadline for submitting comments on EPA's proposed TSCA reform implementation regulations for (1) prioritizing chemicals for risk evaluation purposes and (2) conducting the actual risk evaluation. See the January 17, 2017 and January 19, 2017 Federal Registers at www.gpo.gov/fdsys for details.

March 20, 2017: Deadline for submitting comments on EPA's proposed prohibition on use of TCE in vapor degreasing. See the January 19, 2017 Federal Register at www.gpo.gov/fdsys for details.

April 17, 2017: Deadline for submitting comments on EPA's proposed standards for lead in plumbing fixtures. See the January 17, 2017 Federal Register at www.gpo.gov/fdsys for details.

April 19, 2017: Deadline for submitting comments on EPA's proposed prohibition on use of methylene chloride and NMP for paint stripping. See the January 19, 2017 Federal Register at www.gpo.gov/fdsys for details.