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ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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Final Statutes, Regulations, Guidance and Cases

Citation	Summary	Implications	Schedule/Notes
TRANSITION DEVELOPMENTS: GENERAL			
<p>FEDERAL Trump Administration EPA Transition Developments</p>	<p>In the past month, the Trump administration has taken steps to delay or undo various Obama administration environmental initiatives. Among other things, the administration has extended the effective date of several key regulations adopted by its predecessor including:</p> <ul style="list-style-type: none"> • OSHA’s standards for occupational exposure to beryllium. 82 Fed. Reg. 14439 (Mar. 21, 2017). • Addition of subsurface intrusion component to the hazard ranking system under the federal Superfund program. 82 Fed. Reg. 14324 (Mar. 20, 2017). • Formaldehyde emission standards for composite wood products. 82 Fed. Reg. 14324 (Mar. 20, 2017). • Revisions to accidental release provisions of the Clean Air Act’s Risk Management Program. 82 Fed. Reg. 13968 (Mar. 16, 2017) (extension to June 19, 2017); 82 Fed. Reg. 16146 (Apr. 3, 2017) (proposal to extend effective date to February 19, 2019). <p>EPA also extended the comment period for a number of rules proposed by the Obama administration EPA:</p> <ul style="list-style-type: none"> • Addition of n-propyl bromide to the list of hazardous air pollutants regulated under the National Emission Standards for Hazardous Air Pollutant program. 82 Fed. Reg. 12589 (Mar. 6, 2017). • Addition of natural gas processing facilities to the Toxic Release Inventory program. 82 Fed. Reg. 12924 (Mar. 8, 2017). • Denial of petition to add states to the Northeast Ozone Transport Region. 82 Fed. Reg. 15310 (Mar. 28, 2017). <p>In another important development, EPA withdrew a request for owners and operators in the oil and natural gas industry to provide information on equipment and emissions at existing oil and gas operations. The request was the first step in assessing whether to impose greenhouse gas emission standards on existing oil and gas wells. 82 Fed. Reg. 12817 (Mar. 7, 2017).</p> <p>These measures occurred in the wake of the Trump administration’s regulatory freeze memorandum postponing the effective date of all regulations that had not taken effect 60 days to March 21, 2017.</p>	<p>Any regulations that have been adopted but not yet taken effect can be eliminated only by commencing a new rulemaking, accompanied by appropriate public notice and comment. EPA will have to provide a rational basis for its decision to rescind the rule. The extension of the effective dates gives the Trump administration EPA additional time to assess whether to begin the rescission process.</p> <p>Extending the comment period for proposed rules gives the public additional time to comment and EPA additional time to decide whether to proceed with the final rule. Unless specifically mandated by statute, EPA ordinarily can drop a proposed rule without advance notice or extensive explanation. However, the decision may be challenged by third parties, particularly in the case of rules, such as the proposal to add n-propyl bromide to the list of hazardous air pollutants, which were the result of a petition for rulemaking.</p>	

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TRANSITION DEVELOPMENTS: CLIMATE CHANGE			
<p>FEDERAL Presidential Executive Order: Promoting Energy Independence and Economic Growth</p>	<p>With the purported goal of promoting clean and safe development of the country’s energy resources while avoiding unnecessary regulatory burdens, President Donald Trump issued an executive order that seeks to roll back certain Obama administration climate change initiatives including the Clean Power Plan (CPP), which requires states to develop plans to reduce greenhouse gas (GHG) emissions from existing power plants 32% below 2005 levels by 2030 through a combination of energy efficiency improvements, fuel switching and renewable energy. In brief, the executive order takes the following steps:</p> <ul style="list-style-type: none"> • Rescinds various Obama administration climate change-related executive orders, presidential memoranda, and reports, including the June 2013 Climate Action Plan and March 2014 Climate Action Plan Strategy to Reduce Methane Emissions. • Rescinds the Council on Environmental Quality’s (CEQ) guidance on addressing GHG emissions and the effects of climate change when conducting reviews under the National Environmental Policy Act (NEPA). <i>See</i> 81 Fed. Reg. 51866 (Aug. 5, 2016). • Requires EPA to review the CPP and related rulemakings, including the 2015 New Source Performance Standards addressing GHGs from new, reconstructed and modified power plants, for consistency with the executive order and if appropriate, authorizes EPA to “suspend, revise or rescind the guidance or publish for notice and comment proposed rules suspending, revising or rescinding those rules.” • Orders the disbanding of the Interagency Working Group on Social Cost of Greenhouse Gases, which provided analyses of the social cost of climate change for use in assessing the impacts of federal rules and policies. • Lifts the moratoria on Federal land coal leasing activities. • Requires EPA to review and potentially suspend, rescind or revise recent regulations establishing GHG emission standards for new, reconstructed and modified oil and natural gas development sources. <i>See</i> 81 Fed. Reg. 35824 (June 3, 2016). • Requires the Department of Interior to review and potentially suspend, rescind or revise various regulations intended to regulate or restrict oil and natural gas extraction on federal lands. <p>The executive order can be found on EPA’s website at: www.whitehouse.gov/briefing-room/presidential-actions.</p>	<p>While the Trump administration can immediately rescind previous executive orders, memorandum and reports, rescinding the CPP and other rulemakings will require EPA to publish a proposed rule, accept public comment, and issue a final rule, a process which may take many months, if not years. When, and if, the rescission is finalized, the decision will inevitably be challenged by environmental groups and others, potentially delaying final implementation of the change still further.</p> <p>With respect to the CPP, the immediate implications of the executive order are minimal because the U.S. Supreme Court previously stayed implementation of the rule pending review by the court of appeals. In conjunction with the executive order, the Trump administration has asked the federal court to halt its review of the rule. Environmental groups will likely take steps to ensure that the litigation concerning the CPP continues.</p>	<p>In fulfillment of the executive order, EPA announced on April 3, 2017 that it was withdrawing the following proposed rules relating to the CPP from further consideration: Federal Implementation Plan (to be implemented in states that declined to administer the CPP), 80 Fed. Reg. 64966 (Oct. 23, 2015) and Clean Energy Program Design Details, 81 Fed. Reg. 42940 (June 30, 2016). The next day, EPA published a series of notices announcing its intent to review and potentially suspend, revise or rescind the CPP, NSPS and oil/natural gas GHG rulemakings. On April 5, 2017, EPA published a formal notice withdrawing the CEQ’s guidance on GHG emission and climate change under NEPA.</p>

Proposed Laws, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
RADIOACTIVE MATERIALS			
<p>NEW YORK STATE Prevention and Control of Environmental Pollution by Radioactive Materials 6 NYCRR Part 380</p>	<p>DEC proposed to revise its regulations governing the disposal and release of radioactive materials to incorporate changes to federal rules, simplify and update language, and add requirements that are already being implemented via permit. The radioactive materials regulations, set forth at 6 NYCRR Part 380, set limits on public exposure to radioactive materials, require parties to obtain permits for most releases of radioactive materials, and restrict disposal of the materials. With the recent rulemaking, DEC is proposing to:</p> <ul style="list-style-type: none"> • Expand rule to cover use of licensed radioactive materials (RAM) in the environment (e.g., environmental studies); clarify when RAM is not subject to Part 380; and clarify that sites containing buried radioactive waste are subject to Part 380. • Add definitions (disposal, emission, effluent, effluent treatment, uncontrolled release, dose constraint, public dose and TENORM); limit the term “discharge” to releases to ground or surface water and add the term “emission” to cover releases to the air and “release” to cover the introduction of material into the environment generally; revise the definitions of incineration, permit, loss of control of RAM, total effective dose equivalent, and member of the public; delete the term shallow dose equivalent. • Clarify what types of activities require a permit as well as the content of permit applications (consistent with recent DEC practices). • Expand the existing “biomedical exemption” from the permit requirements for certain animal tissue to cover animal bedding. • Limit airborne emissions to 10 millirem consistent with federal regulations and current DEC permit conditions. • Require annual calibration of instruments measuring effluent flow rates. • Require permittee to make data maintained electronically available by hard copy and require the transfer of records when a permit is transferred. • Require reporting of environmental dosimeter results consistent with current permit conditions. • Lower the thresholds for reporting uncontrolled releases or events and specify the content and time frames for these reports. • Add isotopes N-13 and O-15 to the tables of concentrations. <p>The revised draft regulations can be found on DEC’s website at: www.dec.ny.gov/regulations/106149.html.</p>	<p>The rule is primarily of interest to companies that dispose of or otherwise release radioactive materials, including medical practices and facilities, research and diagnostic laboratories, and manufacturers. According to DEC, in 2012 there were 28 persons holding one or more Part 380 permits. Approximately 1500 facilities in the State are subject to Part 380 but do not require a permit.</p>	<p>DEC is accepting comments on the proposed regulations until June 5, 2017. A public hearing on the proposed regulations has been scheduled for May 25, 2017 at 1:00 p.m. at DEC Headquarters, 625 Broadway, Room 129, Albany.</p>

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WATER			
<p>NEW YORK STATE SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity GP-0-17-004</p>	<p>DEC proposed revisions to the State Pollutant Discharge Elimination System (SPDES) Multi-Sector General Permit (MSGP) for Stormwater Discharges Associated with Industrial Activity, which will expire on September 30, 2017. The MSGP covers discharges of stormwater from facilities in certain industrial categories (i.e., sectors). Potentially regulated facilities must prepare a stormwater pollution prevention plan (SWPPP) and notify DEC that they intend to be covered by the MSGP. Assuming coverage is granted, the facility must implement the SWPPP and comply with the general and sector-specific conditions in the MSGP. Facilities can escape coverage if they can certify that all industrial materials and activities are protected from exposure to stormwater. Major changes to the MSGP include:</p> <ul style="list-style-type: none"> • Reorganizing and reformatting the permit to make it more coherent. • Updating non-numeric effluent limits to more closely align to EPA’s 2015 MSGP. The updated permit includes more specific requirements for minimizing exposure, good housekeeping, maintenance, spill prevention and response procedures, employee training, and documentation. • Increasing the frequency of benchmark and numeric effluent limit monitoring and reporting from annual to semi-annual while eliminating requirements to submit corrective action forms and non-compliance event forms on the theory that requiring semi-annual discharge monitoring reports will allow DEC to track compliance. • Changing sector-specific requirements relating to Sector N (scrap recycling and waste recycling facilities) and Sector S (air transportation). In addition, DEC is proposing to remove Sector AD (non-classified stormwater discharge designated by Department as requiring permit coverage) and Sector AE (department of public works and highway maintenance facilities). • Proposing to use electronic filing for reports required by the MSGP as well as for the submission of a Notice of Intent, while continuing to allow paper submission as an option. • Eliminating monitoring waiver provision allowing dischargers to avoid benchmark monitoring by obtaining waivers on an outfall-by-outfall or pollutant-by-pollutant basis. <p>The proposed new MSGP (GP-0-17-004) and related materials can be found on DEC’s website at: www.dec.ny.gov/chemical/41392.html.</p>	<p>The permit affects industrial facilities in specific source categories that discharge stormwater through a point source and are not covered by an individual SPDES permit. The list of covered sectors includes most major manufacturing activities as well as activities with significant potential to adversely impact stormwater such as: automobile salvage yards; scrap recycling and waste recycling facilities; land transportation and/or warehousing; water transportation; ship and boat building or repair yards; air transportation; and treatment works. The proposed revisions to the permit are intended to incorporate changes made to the federal MSGP and update requirements to reflect the Department’s experience with the program.</p>	<p>DEC is accepting comments on the revised MSGP General Permit until May 1, 2017.</p>

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GENERAL			
<p>NEW YORK STATE <i>New York Environmental Leaders</i></p>	<p>DEC made available for comment a draft Commissioner Policy establishing the framework for a revised New York Environmental Leaders (NYEL) program to replace the existing NYEL policy (CP-40) issued December 26, 2006. The revised draft NYEL program seeks “to provide recognition and incentives to organizations that demonstrate their environmental leadership through the use of pollution prevention practices, measures that go beyond compliance, and environmental management systems.” The policy outlines application criteria and procedures (including grounds for exclusion from the program), requirements for maintaining membership in the NYEL, and incentives for participation. DEC will announce an open enrollment period at least once annually during which it will accept new applications for membership. Potential participants must have a reasonably clean compliance record; where DEC does not have sufficient data to assess the facility’s compliance status, it may conduct an on-site compliance assistance visit. The review process will be streamlined for applicants that have an environmental management system (EMS) certified by a third party to meet specified standards. Applicants must commit to improving their environmental performance via measures such as reductions in energy use, reductions in the use of toxic materials, or greater use of local materials. Applicants also may commit to actions that improve their understanding of their impact on the environment and opportunities for improvement (such as implementing an EMS) and actions that sustain past measurable improvements. Applicants also must commit to making their approved NYEL application and annual performance reports available to the public and their employees. In exchange, NYEL members receive various incentives, including public recognition, the right to use the NYEL logo, priority assistance from DEC, and coordination of schedules for routine inspections and a possibly reduced inspection schedule.</p> <p>The draft policy can be found on DEC’s website at: www.dec.ny.gov/chemical/939.html.</p>	<p>The draft Program Policy is potentially of interest to companies seeking to promote their environmental compliance records. With the revised draft policy, DEC has retained the basic concepts underlying the existing NYEL program while making changes to the program details, including replacing the current two-tiered membership scheme (Entry and Leadership) with a single NYEL membership tier and eliminating some of the more prescriptive elements of the program. However, the incentives for participating are largely the same.</p> <p>In conjunction with the Program Policy, DEC plans to issue guidance identifying which compliance records will exclude an entity from participating in the NYEL program, explaining the commitment requirements for facilities based on size and industry sector, and describing the commitment options an applicant can choose from.</p>	<p>DEC is accepting comments on the revised draft policy until April 21, 2017.</p>

Other Recent Developments (Final)

CLIMATE CHANGE

FEDERAL: EPA announced its intention to **reconsider the results of its mid-term evaluation (MTE) of its light-duty vehicle GHG emission standards**. In 2012, EPA adopted GHG and corporate average fuel economy (CAFÉ) standards applicable to model year 2017-2025 light-duty vehicles. The rule requires EPA to review the standards for model year 2022-2025 to confirm that the standards are still appropriate and achievable. With a few days left in the Obama administration, EPA announced the results of its MTE, declaring that the standards in the 2012 rule for 2022-2025 model year vehicles were feasible at reasonable cost using existing and emerging technologies. The Trump administration EPA announced plans to review the MTE after noting that the evaluation was not due until April 1, 2018 and that the National Highway Transportation Safety Administration had not yet issued its MTE findings with respect to the CAFÉ standards. The announcement can be found in the March 22, 2017 Federal Register at: www.gpo.gov/fdsys.

Implications: The reconsideration is primarily of interest to the automotive industry, which had expressed concerns about the cost and feasibility of achieving the second phase of the light-duty vehicle GHG emission standards.

WATER

FEDERAL: The Trump administration issued an executive order and follow up notice announcing its intention to **review and potentially revise or rescind the joint EPA and U.S. Army Corps of Engineers (ACOE) rule defining “waters of the United States”** for purposes of determining jurisdiction under the Clean Water Act (CWA). The CWA prohibits the discharge of pollutants into “navigable waters” except in compliance with specific CWA requirements. Navigable waters, in turn, is defined as “waters of the United States.” Over the years, many questions arose about the scope of CWA jurisdiction in the wake of several Supreme Court decisions which failed to definitively resolve the issue. In 2015, EPA and the ACOE issued a joint rule that defined “waters of the United States,” identifying categories of jurisdictional waters as well as a subset of waters to be assessed on a case-by-case basis to determine whether there is a sufficient nexus to justify regulating them as a water of the United States. Business groups and various states strongly objected to the rule, arguing that it significantly expanded the agencies’ jurisdiction. In late February 2017, President Donald Trump issued an executive order requiring EPA and the ACOE to review and potentially rescind or revise the rule. The executive order was followed by a March 6, 2017 Federal Register notice confirming this intent; the notice can be found at: www.gpo.gov/fdsys. The executive order will not have any direct impact on EPA and ACOE permits because implementation of the rule was previously stayed pending review by the Supreme Court, which has agreed to decide whether challenges to the rule should be heard in the federal appellate or district courts.

Implications: The announcement potentially affects virtually all CWA programs, including ACOE § 404 permits, National/State Pollutant Discharge Elimination System wastewater discharge permits, and CWA § 401 water quality certifications.

FEDERAL/NEW YORK STATE: The New York Department of State (DOS) issued the results of its review of the consistency of the **nationwide permits (NWP) recently reissued by the ACOE** with the State's Coastal Zone Management Program. 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. In conjunction with the five-year review of the NWPs, DOS must review each permit to determine whether the Department agrees with the ACOE's determination that the permit is consistent with the State's Coastal Zone Management Program and impose additional conditions, if appropriate. The DOS's recent letter divides the reissued NWPs into four categories: (1) DOS concurs with ACOE's consistency determination provided the permittee complies with any applicable ACOE general and regional conditions; (2) DOS concurs with ACOE's consistency determination provided the permittee complies with any applicable ACOE regional conditions as well as additional conditions specified in the letter; (3) DOS concurs with ACOE's consistency determination where activities would occur outside the New York City Waterfront Revitalization Program; and (4) DOS objects to the ACOE's consistency determination throughout New York State. The letter includes a discussion of the reasons for its objections and specifies the procedures to be followed to obtain DOS concurrence with an applicant's consistency certification. A chart summarizing the results of DOS's consistency review can be found at: www.dos.ny.gov/opd/programs/consistency/federalpermits.html.

Implications: The letter is potentially of interest to anyone engaged in activities involving the disturbance of wetlands and waterways that may require an ACOE NWP.

OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: President Donald Trump recently signed H.J. Res. 83, which **nullified a recent rule amending OSHA's recordkeeping regulations to clarify that the duty to make and maintain accurate records of work-related injuries and illnesses is an ongoing obligation**. As a general rule, employers with more than 10 employees must keep records of occupational injuries and illnesses at their establishments under 29 CFR Part 1904. These records include a log of workplace injuries/illnesses, supplementary injury/illness incident reports, and an annual summary of work-related injuries and illnesses that must be posted in the workplace. OSHA traditionally interpreted this rule to impose a continuing duty to record injuries/illnesses, allowing the agency to cite employers for such recordkeeping violations for up to six months after the five-year record retention period mandated under Part 1904. However, a federal court concluded that OSHA must cite an employer for failing to record an injury or illness under the current regulations within six months of the first day on which the regulation requires the record. OSHA adopted a rule on December 19, 2016 that revised the Part 1904 regulations to clarify that the duty to make and maintain an accurate record of a work-related injury or illness is an ongoing obligation that continues until the required record is made or the five-year record retention period ends. Invoking the Congressional Review Act, the House and Senate enacted resolutions repealing the rule, which President Trump signed. This action nullifies the rule and prevents OSHA from promulgating a rule "in substantially the same form" as the disapproved rule.

Implications: The rescission is potentially of interest to any facility with more than 10 employees that is subject to the OSHA injury/illness recordkeeping requirements.

FEDERAL: OSHA issued a series of **guidance documents to assist small businesses, storage facilities, and explosives and pyrotechnics manufacturers with compliance with the process safety management (PSM) standard**, set forth at 29 CFR § 1910.119. Under the PSM standard, employers that manage highly hazardous chemicals above specified threshold quantities must implement a PSM program to identify workplace chemical and process hazards, perform a workplace process hazards analysis (PHA), and develop programs to respond to the PHA findings, including written safety procedures, training, establishment of a quality assurance program and other measures. OSHA's recent guidance, entitled *Process Safety Management for Small Businesses*, focuses on the PSM requirements of greatest interest to small businesses, including: applicability, compilation of process safety information, completion of a PHA, training, mechanical integrity, and compliance audits. It also contains a list of frequently asked questions and examples of PHA methodology. OSHA issued separate PSM guidance documents for storage facilities and explosives and pyrotechnics manufacturing. Links to the documents can be found on the OSHA website at: www.osha.gov/as/opa/quicktakes/qt040317.html.

Implications: These guidance documents are potentially of interest to facilities required to comply with the OSHA PSM requirements.

Other Recent Developments (Proposed)

WILDLIFE

NEW YORK STATE: DEC is accepting comments on a **draft Supplemental Environmental Impact Statement (SEIS) to update its *Final Programmatic Environmental Impact Statement on Habitat Management Activities of the Department of Environmental Conservation Division of Fish and Wildlife***. DEC currently manages approximately 234,000 acres of state land categorized as Wildlife Management, Multiple Use, Unique, and Cooperative Areas with the goal of providing conditions favorable for wildlife survival and reproduction and opportunities for wildlife-oriented recreation. The original programmatic EIS, which was issued in 1979, identified habitat management activities, analyzed their environmental impacts, and considered the impact of no-action alternatives. With the recent update, DEC is proposing changes to the methods used to manage these lands, deleting certain practices that are no longer used, adding new practices, and analyzing their environmental impacts. The draft SEIS provides a brief overview of the relevant requirements and discusses the proposed deletions and additions to the list of acceptable wildlife management activities in detail. DEC is accepting comments on the draft SEIS until **May 1, 2017**; it can be found on DEC's website at: www.dec.ny.gov/regulations/28693.html.

Implications: The guidance is primarily of interest to individuals who visit DEC's wildlife management areas.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

April 14, 2017: Deadline for submitting application for DEC's 2017 NYS Environmental Excellence Awards. See DEC's website at www.dec.ny.gov/public/945.html 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 the use of methylene chloride and NMP for paint stripping. See the January 19, 2017 Federal Register at www.gpo.gov/fdsys for details.

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

April 21, 2017: Deadline for submitting comments on DEC's revised draft Commissioner's Policy, *New York Environmental Leaders*. See DEC's website at www.dec.ny.gov/chemical/939.html for details.

May 1, 2017: Deadline for submitting comments on DEC's revised draft MSGP for stormwater discharges from industrial activities. See DEC's website at www.dec.ny.gov/chemical/41392.html for details.

May 1, 2017: Deadline for submitting comments on DEC's draft SEIS updating its 1979 final programmatic EIS on habitat management activities for DEC wildlife management areas. See DEC's website at www.dec.ny.gov/regulations/28693.html for details.

May 6, 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 (extended from March 7, 2017). See the January 6, 2017 Federal Register at www.gpo.gov/fdsys for details.

May 15, 2017: Deadline for submitting comments on EPA's proposed denial of petition to add eight states to the Northeast Ozone Transport Region (extended from February 21, 2017). See the January 19, 2017 Federal Register at www.gpo.gov/fdsys for details.

May 19, 2017: Deadline for submitting comments on DEC's proposed revisions to the SEQRA regulations. See DEC's website at www.dec.ny.gov/permits/83389.html for details.

May 25, 2017: Public hearing on DEC's proposed revisions to the regulations concerning disposal and release of radioactive materials scheduled for 1:00 p.m. at DEC Headquarters, 625 Broadway, Room 129, Albany. See DEC's website at www.dec.ny.gov/regulations/106149.html for details.

June 5, 2017: Deadline for submitting comments on DEC's proposed revisions to its rules relating to disposal and release of radioactive materials. See DEC's website at www.dec.ny.gov/regulations/106149.html for details.

June 8, 2017: Deadline for submitting comments on EPA's proposal to add n-propyl-bromide to the list of hazardous air pollutants regulated under the NESHAP program (extended from March 10, 2017). See the January 9, 2017 Federal Register at www.gpo.gov/fdsys for details.

July 11, 2017: Deadline for submitting comments on EPA's proposed Superfund financial responsibility regulations, including specific requirements for hardrock mining facilities (extended from March 13, 2017). See the January 11, 2017 Federal Register at www.gpo.gov/fdsys for details.