ENVIRONMENTAL BREAKFAST CLUB
REGULATORY SUMMARY

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Final Statutes, Regulations, Guidance and Cases

Citation	Summary	Implications	Schedule/Notes
AIR			
NEW YORK STATE **Dry Cleaning Facilities** 6 NYCRR Part 232	DEC **repealed and replaced the air emission standards for dry cleaning facilities** set forth at 6 NYCRR Part 232. The dry cleaning industry has changed significantly since the current version of the regulations was adopted in 1997, making many of the existing provisions outdated. DEC also is revising the regulations to incorporate requirements from the federal dry cleaning rules. Key changes include: • Requiring the removal of all perchloroethylene (perc) dry cleaning machines from residential buildings by December 21, 2020 and requiring the phase-out of third generation machines (i.e., those without integral secondary control systems) by December 31, 2021. • Replacing DEC's existing machine model certification program with a requirement that machine manufacturers supply a Statement of Compliance affirming their compliance with the State's perc machine performance standards. • Imposing additional standards on fourth generation perc machines, including monthly operator machine drum testing at co-located residential and commercial facilities. • Establishing an approval process for alternative dry cleaning solvents and new emission standards, equipment standards, and specifications for installation and operation of alternative solvent dry cleaning machines. • Requiring the phaseout of alternative solvent transfer machines by December 31, 2031. • Imposing operator leak inspection, self-monitoring, operation and maintenance, recordkeeping and other requirements on alternative solvent dry cleaning machines. The rule can be found on DEC's website at: www.dec.ny.gov/regulations/110006.html.	The changes will: make New York's requirements for perc and alternative solvent dry cleaning equipment consistent with applicable federal standards; phase out the few remaining third generation perc machines; improve compliance with the emission standards in the existing regulations; and establish an approval process and equipment and related standards for alternative solvents. Currently, alternative solvent dry cleaning machines are regulated under 6 NYCRR Part 212. According to DEC, 1,690 dry cleaning facilities will be affected by the rulemaking; 1,160 of these facilities operates at least one perc dry cleaning machine while 530 operate exclusively alternative solvent machines.	The rule will take effect March 10, 2018 (30 days after filing). DEC held four public hearings on the proposed regulation and received comments from 40 individuals. DEC made "nonsubstantive" changes to the rule following the public comment period.

Citation	Summary	Implications	Schedule/Notes
REMEDIATION			
FEDERAL **Decision Not to Adopt Financial Responsibility Requirements under CERCLA § 108(b)** 40 CFR Part 320 83 Fed. Reg. 7556 (Feb. 21, 2018)	EPA **announced that it would not be adopting new regulations 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. In January 2017, EPA proposed 40 CFR Part 320, which contained both general financial responsibility requirements and specific provisions targeted at hardrock mining sources. Owners and operators of facilities subject to the proposed rule were 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. The second part of the rule contained 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. With the recent notice, the Trump administration EPA announced that it would not issue financial responsibility requirements for facilities in the hardrock mining industry. In support, EPA asserted that the risk posed by modern hardrock mining operations does not justify imposing financial responsibility requirements. Among other things, EPA concluded that existing federal and state regulations (including financial responsibility requirements) and improved mining practices reduce the risk that there will be unfunded response liabilities at currently operating mines. They also questioned whether the financial industry could supply the instruments required by the rule. Having deciding not to require financial responsibility for the hardrock mining industry (the first to be regulated under Section 108(b)), EPA decided not to finalize the rules governing financial responsibility generally. The announcement can be found in the February 21, 2018 Federal Register at: www.gpo.gov/fdsys.	The announcement marks the end (for now) of EPA efforts to adopt financial responsibility requirements under CERCLA § 108(b). Environmental groups are expected to challenge EPA's final decision.	EPA's final action takes effect March 23, 2018.

Citation	Summary	Implications	Schedule/Notes
WATER			
NEW YORK STATE **SPDES Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity** GP-0-17-004	DEC **renewed the State Pollutant Discharge Elimination System (SPDES) Multi-Sector General Permit (MSGP) for Stormwater Discharges Associated with Industrial Activity**. The MSGP covers discharges of stormwater from facilities in certain industrial categories. Potentially regulated facilities must notify DEC that they intend to be covered by the MSGP and prepare a stormwater pollution prevention plan (SWPPP). Assuming coverage is granted, the facility must implement the SWPPP and comply with the general and sector-specific conditions in the MSGP. DEC accepted comment on the draft renewal permit in March 2017 and made additional revisions available to the public in July 2017. Key changes include: • Reorganizing and reformatting the permit to make it more coherent and eliminate duplicative language. • Updating non-numeric effluent limits (i.e., work practices) to better align with EPA's 2015 MSGP, including rules for minimizing exposure, good housekeeping, maintenance, spill prevention/response, and employee training. • Increasing the frequency of benchmark and numeric effluent limit monitoring/reporting from annual to semi-annual while eliminating requirements to submit corrective action forms. • Changing sector-specific requirements relating to Sector N (scrap recycling and waste recycling facilities), Sector S (air transportation) and other sectors, and eliminating Sector AD (non-classified stormwater discharge designated by Department as requiring permit coverage) and Sector AE (department of public works and highway maintenance facilities). • Eliminating monitoring waiver provision allowing dischargers to avoid benchmark monitoring by obtaining waivers on an outfall-by-outfall or pollutant-by-pollutant basis. • Requiring that discharge monitoring reports (DMRs) be submitted electronically through EPA's electronic reporting system, Net DMR, and encouraging electronic filing of Notice of Intent (NOI) and other forms/reports until December 21, 2020, when electronic submission will be mandatory. • Eliminating Notice of Modification form and requiring changes to information on the NOI form. The MSGP and related materials can be found on DEC's website at: www.dec.ny.gov/chemical/9009.html.	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 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 new MSGP took effect March 1, 2018. In order to have coverage under the new permit, owners and operators covered under GP-0-12-001, and all new dischargers, must develop a SWPPP that meets the requirements of GP-0-17-004 and submit a new NOI form as set forth in the permit.

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
AIR			
NEW YORK STATE **Air Permit Rule Revisions** 6 NYCRR Part 201	DEC **has begun the process of reviewing its air permit regulations** and has scheduled a webinar to discuss possible changes and solicit preliminary input from stakeholders. DEC overhauled 6 NYCRR Part 201 in 2013 and is now considering changes designed to clarify certain provisions and address recent developments. Changes under consideration include: • Expanding the criteria research and development activities must meet to be exempt from permitting and requiring a registration or permit if those criteria cannot be met. • Revising various exempt/trivial activities, including: reducing the threshold for exempt asphalt storage tanks from 300,000 barrels to 10,000 gallons; adding an exemption for biodiesel tanks with a capacity less than 300,000 barrels; adding exemptions for lumber drying kilns (untreated lumber only), coffee roasting, breweries, wineries, and distilleries below specific production-related thresholds; deleting construction and demolition waste crushers from the list of trivial activities, and revising the trivial exemption for laser cutting. • Rewriting the modification provisions for state facility permits to make them more consistent with the Title V procedures. Under the revised regulation, significant modifications to state facility permits will require 30 days' public notice, while no notice is required for minor modifications. Certain changes may be made with advance notification if specified criteria are met. • Rewriting the operational flexibility provisions for Title V facilities to more clearly address alternative operating scenarios and establishment of operational flexibility protocols—procedures for evaluating future changes and avoiding formal permit modification procedures if the criteria established in the protocol are met. • Other minor changes/additions to conform Part 201 and 6 NYCRR Part 212 (which was revised in 2015). Questions about the planned revisions can be directed to air.regs@dec.ny.gov.	The changes are potentially of interest to any facility with an air registration, state facility permit or Title V permit under 6 NYCRR Part 201. The revisions are intended to address issues that have arisen since the rules were last revised in 2013 and provide regulatory relief for certain activities, such as biodiesel storage, coffee roasting, and breweries, wineries, and distilleries, that might otherwise be required to obtain registrations or permits.	DEC has scheduled a Part 201 stakeholder webinar on March 19, 2018 at 10:00 a.m. to discuss the proposed changes and seek preliminary input from the public. For further information, contact DEC at the address previously indicated.

Other Recent Developments (Final)

AIR

FEDERAL: EPA **expanded the list of treated railroad ties that can be burned in boilers under CAA § 112**. 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 commercial and industrial solid waste incinerators 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 expanded the list of non-waste fuels to include not only creosote treated railroad ties but railroad ties treated with creosote-borate, copper naphthenate and copper naphthenate-borate. The rule, which took effect February 7, 2018, can be found in the Federal Register issued on that date at: 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.

CLIMATE CHANGE

NEW YORK STATE: DEC adopted regulations **establishing standards and procedures for approving funding for clean vehicle and climate change adaptation and mitigation projects** under the 2016 Climate Smart Community Projects program, set forth in New York Environmental Conservation Law Article 54, Title 15. The law makes rebates of up to $5,000 per vehicle available to municipalities for the purchase or lease of eligible vehicles and up to $250,000 for eligible infrastructure projects supporting public charging and/or fueling of eligible vehicles. Municipal climate adaptation and mitigation projects, by comparison, are eligible for competitive funding of up $2,000,000 per project. These projects include measures to improve natural resiliency, natural mitigation projects, and relocation or retrofitting of existing facilities to address flooding or sea level rise, among other projects. DEC's recent regulations, set forth at 6 NYCRR Part 492: define key terms; establish applicability criteria; summarize the procedures and requirements for applying for rebates/state assistance; and establish criteria and procedures for obtaining state approval and making payment to municipalities. The regulations, which took effect February 28, 2018, can be found on DEC's website at: www.dec.ny.gov/regulations/103870.html. DEC did not make any changes to the rule following the public comment period.

Implications: The rule is primarily relevant to municipalities interested in obtaining rebates for clean vehicle projects or assistance for climate adaptation and mitigation projects.

WATER

FEDERAL: EPA and the U.S. Army Corps of Engineers (ACOE) set a **new applicability date of February 6, 2020 for the 2015 "waters of the United States" rule to address the implications of pending judicial actions** on implementation of the rule**.** In 2015,

EPA and the ACOE redefined the term "waters of the United States" to include specific categories of jurisdictional waters and allow other waters to be included on a case-by-case basis. The controversial rule, which took effect August 28, 2015, was stayed by a federal appellate court shortly after it was enacted and litigation concerning the rule is pending. In the meantime, the agencies under the Trump administration have proposed to rescind the 2015 rule and replace it with a recodification of the pre-2015 rule. The agencies were concerned that if the stay is lifted, the 2015 rule will take effect immediately. To remedy this problem, the agencies adopted a new applicability date of February 6, 2020 to maintain the status quo in the event the stay is lifted and provide regulatory certainty while the agencies consider possible revisions to the rule. The rule establishing the new applicability date can be found in the February 6, 2018 Federal Register at: www.gpo.gov/fdsys.

Implications: The rule is potentially of interest to persons engaged in activities that affect "waters of the United States."

NEW YORK STATE: The New York State Department of Health (DOH) adopted a sixth emergency rule imposing **lead testing requirements for school drinking water** to extend the program while it finalizes a permanent rule. The rule requires all school districts, including those already classified as public water systems, to test potable water outlets for lead and develop and implement a lead remediation plan, where necessary. For buildings serving elementary school age children (prekindergarten through fifth grade), the first samples were required to be collected by September 30, 2016, with an October 31, 2016 deadline for all other schools. If the results exceed 15 parts per billion, the school must: prohibit use of the outlet until the problem is remediated; supply the building with adequate potable water; immediately report the test results to the local health department; and notify staff and parents in writing and via the school's website. Schools also must post a list of buildings found to be lead-free and report the sample results to DOH and others by November 11, 2016 through DOH's electronic reporting system. Additional samples must be taken in 2020 and at least every five years thereafter. DOH proposed a permanent regulation to replace the emergency rule and accepted comment through June 26, 2017. The current emergency rule expires March 26, 2018. The emergency rule can be found at: https://regs.health.ny.gov/regulations/proposed-rule-making.

Implications: The rule is primarily of interest to public schools; it does not apply to private schools.

Other Recent Developments (Proposed)

CHEMICAL

FEDERAL: EPA proposed to **set user fees for administration of the Toxic Substances Control Act (TSCA)** as required by recent amendments to the TSCA statute. TSCA requires EPA to assess and regulate new chemicals before they enter the market, regulate existing chemicals, such as PCBs, that pose an unreasonable risk to health or the environment, and regulate the distribution and use of chemicals. Although the original TSCA statute included a limited fee program, the 2016 amendments require EPA to set fees that are designed to collect 25% of the Agency's costs to carry out work under Sections 4, 5, 6 and 14 of the Act or $25 million, whichever is lower. The money will be deposited in a separate TSCA Service Fee Fund and dedicated to payment of program administration costs.

The fees will be levied against chemical manufacturers who: are required to submit information by test rule, test order or enforceable consent agreement under TSCA Section 4; submit notification of or information related to intent to manufacturer a new chemical or propose a significant new use of a chemical under TSCA Section 5; or manufacture or process a chemical that requires a risk evaluation under TSCA Section 6(b). The fees must be reviewed and adjusted every three years to reflect inflation and ensure that they are sufficient to meet the 25% cost threshold. The rule addresses key aspects of the fee program, including who will be charged, fee calculation alternatives, methods of payment, timing, refunds, and consequences of failure to pay. EPA is accepting comment on the proposed user fee rule until **April 27, 2018**; the proposal can be found in the February 26, 2018 Federal Register at: www.gpo.gov/fdsys.

Implications: The rule is primarily of interest to chemical manufacturers and importers regulated under the TSCA program; it will cover TSCA fees for the years 2019, 2020, and 2021.

WATER

NEW YORK STATE: DOH proposed to **revise New York's drinking water regulations to incorporate changes needed to implement the federal Revised Total Coliform Rule** (RTCR), which updates the requirements for monitoring coliform and implementing corrective measures. The current State regulations, set forth at 10 NYCRR Subpart 5-1, require public water systems to monitor for total coliform and conduct follow-up sampling if coliform is detected above a specified maximum contaminant level (MCL). With the recent rulemaking, DOH is proposing to replace the coliform MCL with a treatment technique trigger (TTT) and require implementation of a system assessment if the TTT is met. The assessments are designed to identify the possible presence of "sanitary defects" (defined as defects "that could provide a pathway of entry for microbial contamination in the distribution system or that is indicative of a failure or imminent failure of a barrier already in place"), defects in distribution system coliform monitoring practices, and, when possible, the likely reason the system triggered the assessment. The type of assessment required (Level 1 or Level 2) depends on the extent of noncompliance identified. For example, a Level 1 assessment is required if a system required to collect less than 40 samples per month has two or more samples that are total coliform positive. By comparison, a Level 2 assessment is required if the same system has a second Level 1 trigger within 12 months (unless the State determines that the problem which gave rise to the first Level 1 trigger has been corrected). The rule changes are necessary to implement the RTCR, allowing New York to retain primacy under the federal Safe Drinking Water Act; currently, public water systems must comply with the RTCR pursuant to schedules established by EPA. DOH is accepting comments on the proposed rule until **April 9, 2018**; the proposal can be found in the February 7, 2018 State Register at: https://docs.dos.ny.gov/info/register/2018/feb7/toc.html.

Implications: The proposed revisions are primarily of interest to owners/operators of public water systems.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

March 19: 2018: Webinar addressing DEC's preliminary changes to New York's air permitting regulations scheduled for 10:00 a.m. Contact air.regs@dec.ny.gov for information about participating in the webinar.

March 27, 2018: Deadline for submitting comments on EPA's corrections/updates to regulations for source testing of emissions. See the January 26, 2018 Federal Register at www.gpo.gov/fdsys for details.

April 9, 2018: Deadline for submitting comments on DOH's proposed revisions to the drinking water standards to incorporate the revised federal total coliform rule. See the February 7, 2018 State Register at https://docs.dos.ny.gov/info/register/2018/feb7/toc.html for details.

April 26, 2018: Deadline for submitting comments on EPA's proposed repeal of the Clean Power Plan. Note that the comment period closed January 16, 2018 but was reopened. See the October 16, 2017 Federal Register at www.gpo.gov/fdsys for details.

April 27, 2018: Deadline for submitting comments on EPA's proposed rule setting TSCA user fees. See the February 26, 2018 Federal Register at: www.gpo.gov/fdsys for details.