



ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

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Final Statutes, Regulations, Guidance and Cases

Citation	Summary	Implications	Schedule/Notes
AIR			
FEDERAL <i>Back-to Basics Process for Reviewing National Ambient Air Quality Standards</i> (May 9, 2018)	<p>As a follow up to President Trump’s 2018 directive compelling EPA to evaluate the policies and procedures relating to the national ambient air quality standards (NAAQS), EPA recently issued a memorandum outlining changes designed to streamline the NAAQS review process and clarify the role of the Clean Air Scientific Advisory Committee (CASAC). Currently, the NAAQS review consists of: information collection; preparation of an Integrated Science Assessment (ISA), Risk and Exposure Assessment (REA) and Policy Assessment (PA); and publication of a proposed rulemaking (recommendation of no change or proposed new standard). The recent memorandum announced changes to the review process organized around five principles.</p> <ul style="list-style-type: none"> • <i>Meet statutory deadlines.</i> EPA has rarely completed NAAQS reviews by the five-year statutory deadline. EPA and the CASAC have been tasked with looking for efficiencies and opportunities to streamline the review process and ensure that they finish within the five-year period, including combining the ISA, REA and PA into a single review. • <i>Address all Clean Air Act provisions for NAAQS reviews.</i> Although the CAA requires the CASAC to advise EPA of “any adverse public health, welfare, social, economic, or energy effects” which may result from various NAAQS options, the CASAC to date has not generally provided advice on social, economic and energy effects. To ensure all impacts are fully addressed, EPA plans to provide a standardized list of questions to the CASAC to frame the NAAQS review. • <i>Streamline and standardize the process for development and review of key policy-relevant information.</i> Consistent with earlier reform initiatives, the memorandum emphasizes that the ISA, REA and PA should focus on policy-relevant science and on studies that address the adequacy of the current standards; it also specifically withdraws an existing policy requiring EPA outreach to other agencies; calls for making the PA available for public comment; and directs EPA to avoid multiple draft reviews of documents whenever possible. • <i>Differentiate science and policy considerations in NAAQS review process.</i> The memo directs EPA to more clearly distinguish between the purely scientific findings of the ISA and the wider range of policy concerns that EPA must consider in deciding whether to revise the NAAQS. • <i>Issue timely implementation regulations and guidance.</i> The memo directs EPA to issue implementation guidance and regulations concurrently with new/revised NAAQS to assist states in developing implementation plans. <p>The memo can be found on EPA’s website at: www.epa.gov/sites/production/files/2018-05/documents/image2018-05-09-173219.pdf.</p>	<p>The guidance is of general interest to anyone that emits criteria pollutants (or their precursors). The NAAQS define what is considered “clean air” for various common contaminants. Once the NAAQS are set, states must develop state implementation plans (SIPs) identifying the measures that will be implemented to achieve and maintain the NAAQS.</p> <p>Under CAA § 109(d)(1), 42 USC § 7409(d)(1), EPA must review each NAAQS every five years to determine if new information justifies changes to a standard. The review process is overseen by the CASAC, a panel of experts that reviews the documents developed by EPA and offers recommendations. Because of the complexity of the review process, EPA has repeatedly failed to complete reviews by the five-year deadline, leading to calls for reform. While industry groups have applauded the planned changes, environmentalists contend that the memorandum will improperly inject economics into what is supposed to be a purely scientific review process.</p>	

Citation	Summary	Implications	Schedule/Notes
CHEMICALS			
NEW YORK STATE Household Cleansing Product Information Disclosure Program DEC Program Policy DMM-2	<p>DEC issued a guidance document entitled <i>Household Cleansing Product Ingredient Disclosure Program</i> implementing a long-standing regulation requiring manufacturers of “household cleansing products” distributed in the State to provide DEC with “such information regarding such products as the commissioner may require.” 6 NYCRR § 659.6(a). Part 659 contains the State’s prohibition against phosphorus in household cleansing products as well as rules governing phosphate labeling. It also includes a more general provision that allows DEC to require household cleansing product manufacturers to provide information regarding product ingredients and make such information publicly available. Pursuant to the guidance, the information to be disclosed falls into the following categories:</p> <ul style="list-style-type: none"> • Manufacturer information, including the name of the manufacturer, and the name, title, email address, toll-free number and mailing address of a staff person or customer service representative trained to help customers obtain information about product ingredients. • Product information, including product name as it appears on label, Universal Product Code, if available, product category under the GS1 Global Product Classification standard, and description of product, including its use and form. • Extent of disclosure, specifying what ingredients must be disclosed and rules governing disclosure of “trace quantities,” ingredients present only as an unintentional consequence of manufacturing (i.e., “nonfunctional ingredients”), and fragrance ingredients. • Ingredients, including Chemical Abstracts Service name and registry number, percentage of content by weight, presence of ingredient on one or more of almost 30 lists of “chemicals of concern,” whether ingredient is a nanoscale material, and role of ingredient (e.g., surfactant, colorant, fragrance, etc.). • Effects on human health and the environment, addressing the nature and extent of investigations and research performed by or for the manufacturer regarding the effects on human health and the environment of the covered product or its components. <p>Manufacturers must post the required information on their website in accordance with detailed posting parameters relating to website location, ease of access (limiting the number of “clicks” required to reach the information), data format, and other concerns. The guidance also contains directions on protecting confidential business information (CBI).</p> <p>The guidance can be found on DEC’s website at: www.dec.ny.gov/chemical/109021.html.</p>	<p>The guidance applies to manufacturers of “household cleansing products,” which is defined in the regulation as “any product, including but not limited to, soaps and detergents containing a surfactant as a wetting or dirt emulsifying agent and used primarily for domestic or commercial cleaning purposes.” The statute/regulations specifically excludes personal care products and products regulated as pesticides.</p> <p>DEC made significant changes to the guidance in response to public comment, including: rejecting as impractical a proposal to establish a single centralized website for posting information; revising the website design requirements to make them more compatible with existing disclosure schemes and readily accessible; rejecting a suggestion to require manufacturers to submit information to DEC (although the regulations still require manufacturers to submit a form certifying that they have complied with the program); and clarifying the rules governing CBI.</p>	<p>The guidance was issued June 6, 2018. The information posting requirements will be phased in over several years. Manufacturers must post information about intentionally added ingredients other than fragrance ingredients and nonfunctional ingredients present above trace quantities by July 1, 2019 (July 1, 2020 for manufacturers that are independently owned and operated and employ no more than 100 people). The remaining ingredients must be posted in 2020 and 2023. Manufacturers must update their disclosures each time the ingredients in a product change, a new product is introduced, or a chemical in their product is added to a list of chemicals of concern.</p>

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WATER			
NEW YORK STATE Lead Testing of School Drinking Water 10 NYCRR subpart 67-4	<p>After multiple emergency rulemakings, the New York State Department of Health (DOH) adopted a permanent rule imposing lead testing requirements for school drinking water. 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.</p> <p>The rule can be found in the May 9, 2018 State Register at: https://docs.dos.ny.gov/info/register/2018/may9/toc.html.</p>	<p>The regulation implements A.10740, which was signed by Governor Cuomo on September 6, 2016. The rule is primarily of interest to school districts and board of cooperative education service facilities (collectively public schools) and to the students, teachers and staffs in those schools. The rule does not apply to private schools.</p>	<p>The rule took effect May 9, 2018 following multiple emergency rulemakings. DOH made minor changes to the proposed rule, which was published last summer. Emergency rules implementing the lead testing program have been in effect since September 2016.</p>

Proposed Statutes, Regulations, and Guidance

Citation	Summary	Implications	Schedule/Notes
AIR			
FEDERAL Retention of National Ambient Air Quality Standard for Sulfur Dioxide 40 CFR Part 50 83 Fed. Reg. 26752 (June 8, 2018)	<p>EPA proposed to retain the existing primary (health-based) NAAQS for sulfur dioxide (SO₂) without revisions after finding that the current standard provides the requisite protection to public health with an adequate margin of safety. EPA established a new hourly SO₂ standard of 75 ppb in 2010 at the same time it revoked an existing 24-hour and annual standard. Under the current short-term standard, an area violates the NAAQS if the 99th percentile of daily maximum 1-hour SO₂ concentrations in the ambient air, averaged over three years, exceeds 75 ppb. After reviewing recent data on the health effects of SO₂ in the ambient air and consulting with the Clean Air Scientific Advisory Committee, EPA concluded that the available studies do not call into question the adequacy of the public health protection provided by the current standard and that no change to the SO₂ NAAQS is therefore necessary.</p> <p>The proposed rule can be found in the June 8, 2018 Federal Register at: www.gpo.gov/fdsys.</p>	The announcement is primarily of interest to state regulators who will not be required to revise their SIPs to compel sources to reduce SO ₂ or SO ₂ precursors to attain the NAAQS.	<p>EPA is accepting comments on the proposed finding until July 23, 2018.</p> <p>EPA is collectively reviewing the ecological welfare effects of oxides of nitrogen and sulfur and particulate matter as part of a comprehensive review of the secondary NAAQS for these pollutants.</p>

Citation	Summary	Implications	Schedule/Notes
AIR/CLIMATE CHANGE			
NEW YORK STATE Replacement of Rules Implementing Cross-State Air Pollution Rule; Revisions to Carbon Dioxide Emission Standards for Major Electric Generating Facilities 6 NYCRR Parts 243, 244, 245 and 251	<p>DEC proposed a pair of regulations limiting emissions from fossil fuel-fired power plants. The first rulemaking proposes to repeal and replace the existing regulations implementing the Cross-State Air Pollution Rule (CSAPR)—EPA’s comprehensive cap-and-trade program that limits emissions of nitrogen oxides (NOx) and SO₂ to address ongoing ozone and fine particulate matter nonattainment problems, primarily in the Northeast. Although DEC has adopted regulations implementing the CSAPR, EPA has not yet approved them for incorporation into New York’s SIP; moreover, EPA has since updated the CSAPR to address air quality impacts from the transport of ozone precursors, particularly in the summer months. In light of these circumstances, DEC has proposed to repeal and replace the State’s CSAPR implementing regulations—set forth at 6 NYCRR Parts 243, 244, and 245—with regulations that incorporate the federal CSAPR rules by reference except where state-specific requirements are necessary (e.g., trading program budgets and allowance allocations). The affected rules are Part 243: Transport Rule NOx Ozone Season Trading Program; Part 244: Transport Rule NOx Annual Trading Program; and Part 245: Transport Rule SO₂ Group I Trading Program. Each rule contains provisions relating to applicability, definitions, trading program budgets, timing requirements for allowance allocations, new unit set-aside allocations and energy efficiency and renewable energy technology accounts.</p> <p>In a related development, DEC proposed to revise 6 NYCRR Part 251, which currently imposes carbon dioxide (CO₂) emission limits on new and modified major electric generating facilities. Of particular note, the proposed revisions to Part 251 would for the first time establish CO₂ emission limits for existing power plants. As of December 31, 2020, owners and operators of non-modified major electric generating facilities would be required to meet an emission rate of 1,800 pounds of CO₂ per megawatt hour (MWh) gross electrical output (output-based limit) or 180 pounds of CO₂ per million Btu of input (input-based limit). The owner must specify which limit it will meet and compliance will be assessed on an annual basis by dividing total CO₂ emissions for the calendar year by either total gross MW generated or annual Btu input for each fuel combusted. The limits for new and modified units are unchanged.</p> <p>The rules can be found on DEC’s website at: www.dec.ny.gov/regulations/propregulations.html#public. </p>	<p>The rules are primarily of interest to owners/operators of major fossil fuel-fired power plants, i.e., those with an electric generating capacity of at least 25 megawatts.</p> <p>The changes to Parts 243, 244, and 245 are necessary to give DEC authority to implement the CSAPR in the State. Replacing DEC’s existing State-drafted rules with regulations that implement much of the federal program by reference should simplify the rule drafting and EPA approval process.</p> <p>The proposed CO₂ emission limits for existing power plants are consistent with the State’s goals of reducing CO₂ emissions 40% by 2030. The rule will prevent the operation of high-carbon sources of energy, such as coal-fired power plants, that do not use carbon capture and storage (CCS). As a practical matter, there are very few coal-fired power plants currently operating in New York and those that remain are not expected to operate beyond December 31, 2020, in part because of the proposed rule. Oil and natural gas-fired power plants can meet the CO₂ limits for existing sources without CCS.</p>	<p>DEC is accepting comments on the draft regulations until July 29, 2018. A public hearing is scheduled July 16, 2018 at 11:00 a.m. at DEC’s Central Office, 625 Broadway, Public Assembly Room 129A/B, Albany. Additional public hearings are scheduled in mid/late July in Long Island City and Avon.</p>

Citation	Summary	Implications	Schedule/Notes
CHEMICAL			
FEDERAL Problem Formulations for TSCA Risk Evaluations; Draft Guidance entitled <i>Application of Systematic Review in TSCA Risk Evaluations</i> 83 Fed. Reg. 26998 (June 11, 2018)	<p>EPA is taking comments on problem formulations for the first 10 chemicals identified by EPA for review under the amended Toxic Substances Control Act, 15 USC § 2601 et seq. TSCA requires: premanufacture notification for new chemicals; testing of chemicals where risks or exposures of concern are found; reporting and recordkeeping by chemical manufacturers, importers, processors and/or distributors; and immediate notification to EPA upon learning that a chemical presents a substantial risk to public health or the environment. The 2016 revisions to the TSCA statute require EPA to establish a risk-based process for prioritizing chemicals as high or low priority for risk assessment purposes, including singling out 10 chemicals for immediate review. The 10 chemicals previously identified are 1,4-dioxane, 1-bromopropane, asbestos, carbon tetrachloride, cyclic aliphatic bromide cluster, methylene chloride, n-methylpyrrolidone, pigment violet 29, tetrachloroethylene (i.e., perchloroethylene), and trichloroethylene. In June 2017 EPA announced the availability of scoping documents for the risk evaluations associated with each chemical. EPA revised the scoping documents based on the comments received and developed draft problem formulation documents for each of the 10 chemicals under review. After reviewing the information concerning the problem formulation documents, EPA will release the risk evaluations, which will include information about the hazards, exposures, conditions of use, and potentially exposed or susceptible populations associated with each listed chemical.</p> <p>In the same notice, EPA announced that it is taking comments on a draft guidance document entitled the <i>Application of Systematic Review in TSCA Risk Evaluations</i>, which sets out the general principles intended to guide EPA's systematic review in the risk evaluation process for the 10 chemicals listed above. The guidance focuses on data-related issues, containing detailed instructions relating to data search, screening, extraction, evaluation and integration. It is accompanied by appendices containing quality criteria for different types of data (physical/chemical property, fate, exposures, ecological hazards, etc.).</p> <p>The announcement can be found in the June 11, 2018 Federal Register at: www.gpo.gov/fdsys. The guidance document can be found at: www.epa.gov/assessing-and-managing-chemicals-under-tsca/application-systematic-review-tsca-risk-evaluations.</p>	<p>The announcement is primarily of interest to manufacturers/users of the 10 listed chemicals. Products identified as a risk under the TSCA review process may eventually be subject to use limitations or bans. According to EPA, the scoping documents on the 10 chemicals were not sufficiently refined or specific, prompting EPA to take the interim step of issuing the problem formulations, which will inform the final risk evaluations. The draft guidance document, which was issued concurrently with the problem formulations, provides general insights into EPA's process of conducting risk evaluations for chemical products under the TSCA program.</p>	<p>EPA is accepting comments on the draft problem formulations and guidance document until July 26, 2018.</p>

Citation	Summary	Implications	Schedule/Notes
OTHER			
FEDERAL Risk Management Plan Program under Clean Air Act 40 CFR Part 68 83 Fed. Reg. 24850 (May 30, 2018)	<p>EPA proposed to rescind key aspects of its 2017 revisions to 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. In the wake of several major chemical accidents, the Obama administration EPA adopted major changes to the RMP regulations, imposing additional accident prevention requirements, requiring periodic notification and field exercises, and increasing the availability of information. Following the change in administrations, EPA postponed the effective date of the regulations while reconsidering the changes at the behest of certain states and industry groups. Following reconsideration, EPA proposed to modify the 2017 rule as follows.</p> <ul style="list-style-type: none"> • <i>Accident prevention program revisions.</i> EPA proposed to rescind virtually all of the requirements added to the accident prevention portion of the RMP rule, including provisions requiring a compulsory root cause analysis and independent third party audit at facilities with Program 2 or 3 processes following major incidents. EPA also proposed to rescind provisions requiring facilities in certain North American Industrial Classification System codes (paper manufacturing, petroleum and coal products manufacturing, and chemical manufacturing) to evaluate safer production alternatives as part of their hazard assessment. • <i>Emergency response enhancements.</i> EPA has proposed to pull back on many of the changes to the rule's emergency response provisions. Although the agency will continue to require tabletop and field exercises to improve coordination with local emergency responders, it is considering eliminating the minimum frequency requirements and giving facilities greater flexibility with respect to the content of these exercises and documentation. In the alternative, the agency is considering rescinding the field and tabletop exercise requirements altogether. • <i>Enhanced availability of information.</i> EPA is proposing to rescind the requirement that all RMP facilities provide certain basic information to the public upon request. However, the agency plans to retain the requirement that the facility hold a public meeting within 90 days of a reportable accident. <p>Finally, EPA proposes to significantly delay various compliance dates.</p> <p>The proposed rule can be found in the May 30, 2018 Federal Register at: www.gpo.gov/fdsys.</p>	<p>The proposal is primarily of interest to facilities required to prepare RMPs. According to EPA, the proposal reflects issues raised by three petitions for reconsideration of the RMP amendments received by the agency as well as other revisions identified during its review of the rule. In a statement supporting the proposal, EPA Administrator Scott Pruitt contended that the rule “proposes to reduce unnecessary regulatory burdens, address the concerns of stakeholders and emergency responders on the ground, and save Americans roughly \$88 million a year.”</p>	<p>EPA is accepting comments on the proposed revisions to the RMP rule until July 30, 2018.</p>

Other Recent Developments (Final)

AIR

FEDERAL: EPA **published the remaining air quality designations for the 2015 ozone NAAQS**. EPA reduced the primary (health-based) annual ozone NAAQS in 2015 from 0.075 to 0.070 parts per million after concluding that the existing standard did not protect public health with an adequate margin of safety. Under the CAA, EPA must designate areas within two years of adopting a new/revised standard, meaning the deadline for finalizing area designations under the 2015 ozone NAAQS was October 1, 2017. In November 2017, EPA issued attainment/unclassifiable designations covering areas with monitors showing attainment or that EPA has no reason to believe are violating the NAAQS or contributing to violation of a NAAQS in a nearby county. With the current rulemaking, EPA issued nonattainment designations for counties not addressed in the November 2017 rulemaking. The ozone NAAQS designation rule can be found in the June 4, 2018 Federal Register at www.gpo.gov/fdsys.

Implications: EPA designated the New York City metropolitan area encompassing New York City, Long Island, and Westchester and Rockland County as moderate nonattainment. The remainder of New York State is in attainment for the 2015 ozone standard.

HAZARDOUS WASTE

FEDERAL: EPA issued a **rule implementing a recent court decision vacating elements of its January 2015 rule excluding certain secondary materials sent for recycling** from regulation as hazardous waste. In 2008, EPA extended an existing rule exempting certain hazardous secondary materials from regulation to include materials that are: (1) generated and legitimately reclaimed under the control of the generator; (2) generated and transferred to another company for legitimate reclamation; or (3) determined to be non-waste following a case-by-case review. EPA also defined “legitimate” recycling activities to distinguish between real and sham recycling. The rule proved extremely controversial, prompting EPA to make significant changes in 2015, including revising the exclusion for hazardous secondary materials shipped from a generator to another company for reclamation to require that materials be sent to a “verified” recycler, i.e., a recycler with a RCRA permit or a variance from EPA or the authorized state. In a recent decision, a federal court vacated the 2015 verified recycler exclusion and ordered reinstatement of the 2008 provision. With the recent rulemaking, EPA revised the rule to implement the vacature ordered by the court. The rule can be found in the May 30, 2018 Federal Register at: www.gpo.gov/fdsys.

Implications: New York State never adopted the 2008 secondary materials rule and so is unaffected by the court decision and recent rule change.

SOLID WASTE

NEW YORK STATE: DEC released a report entitled *The Feasibility of Creating and Implementing a Statewide Pharmaceutical Stewardship Program in New York State*, which contains recommendations for handling the management and disposal of unused, expired or unwanted pharmaceuticals. In 2017, the New York Legislature enacted a law requiring chain pharmacies with at least 10 locations in the State to offer mail-back envelopes to consumers for the return of pharmaceuticals. Governor Cuomo vetoed the bill over concerns that it improperly burdened chain pharmacies with the costs of handling waste pharmaceuticals and allowed them to pass the costs on to consumers by authorizing a fee of up to \$2.00 for the mail-back envelope. In its place, he required DEC to meet with stakeholders and investigate the feasibility of implementing a statewide pharmaceutical stewardship program. The recent report calls for establishment of a stewardship program fully funded by pharmaceutical manufacturers and run by a newly established stewardship organization. The program would cover prescription and nonprescription drugs, combination products, drugs in medical devices and veterinary drugs. The organization would develop a plan for DEC approval that requires all New York pharmacies to house a collection receptacle and offer pre-paid mailback envelopes at the time of sale, with the possibility of other authorized collection alternatives. The collected pharmaceuticals would be disposed of at a municipal solid waste combustor or hazardous waste facility or by another DEC-approved method. The report is available at: www.dontflushyourdrugs.net.

Implications: The report is of interest to pharmaceutical manufacturers, pharmacies and the general public. Currently, DEC has a pilot program in place that distributed collection boxes to certain pharmacies, hospitals and long-term care facilities across the state. The New York State Department of Health oversees a separate Medication Drop Box Program that allows law enforcement agencies to operate an on-site drop box for pharmaceuticals.

REMEDIATION

NEW YORK STATE: The New York Court of Appeals recently issued a case **upholding DEC's decision to unilaterally remediate a State Superfund site** in the face of a recalcitrant responsible party. The site at issue is an operating pesticide manufacturing plant listed on New York's Superfund registry and subject to the corrective action requirements of the Resource Conservation and Recovery Act. In 2013, DEC adopted a final corrective measure and attempted to negotiate a consent order obligating the company to implement the measure. When the negotiations failed, EPA announced that it would undertake the corrective measure itself. The company challenged that decision on various grounds, including the argument that DEC's decision to unilaterally implement the corrective measures was arbitrary and capricious. In *FMC Corp. v. DEC*, the Court of Appeals noted that while ECL Article 27, Title 13 expresses a preference for placing the burden of remediation on responsible parties, it also authorizes DEC to implement remedial actions if the responsible party is unknown or unable or unwilling to remediate. On the more specific challenge that DEC's selected remedy was not cost-effective, the court found that the statute entrusts cost-effectiveness determinations to the "discretion of the department" and does not require DEC to substantiate its findings in writing. The court went on to find that DEC, in fact, determined that proceeding unilaterally to implement the remedial option selected was a cost-effective alternative to ordering the plaintiff to proceed.

Implications: The decision clarifies the scope of DEC's authority to proceed unilaterally under the State Superfund law to clean up a site when a responsible party refuses to act.

CHEMICAL

FEDERAL: EPA added a nonylphenol ethoxylates (NPE) category to the list of toxic chemicals subject to reporting under the Toxics Release Inventory (TRI) program. Under Section 313 of the Emergency Planning and Community-Right-to-Know Act (EPCRA), certain facilities that manufacture, process or otherwise use listed hazardous chemicals in amounts above specified thresholds must report the amount of the chemical released to air or water or disposed of on land on an annual basis. EPA listed NPEs under the TRI program after concluding that longer chain NPEs can break down in the environment into short chain NPEs and nonylphenol, both of which are highly toxic to aquatic organisms. The final rule, which takes effect November 30, 2018, can be found in the June 12, 2018 Federal Register at: www.gpo.gov/fdsys. The rule will apply for the reporting year beginning January 1, 2019 (with reports due July 1, 2020).

Implications: The rule is potentially of interest to facilities that manufacture, process or otherwise use significant quantities of NPEs. NPEs have surfactant properties and are used in adhesives, wetting agents, emulsifiers, stabilizers, dispersants, cleaners, paints and coatings.

WATER

NEW YORK STATE: DOH revised 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 State regulations, set forth at 10 NYCRR Subpart 5-1, previously required public water systems to monitor for total coliform and conduct follow-up sampling if coliform was detected above a specified maximum contaminant level (MCL). With the recent rulemaking, DOH replaced the coliform MCL with a treatment technique trigger (TTT) that requires 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 and allow New York to retain primacy under the federal Safe Drinking Water Act; public water systems previously were required to comply with the RTCR pursuant to schedules established by EPA. The rule took effect May

16, 2018; DOH received no public comments on the proposal. Notice of the final rule can be found in the May 16, 2018 State Register at: <https://docs.dos.ny.gov/info/register/2018/may16/toc.html>.

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

OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: The Occupational Safety and Health Administration (OSHA) published a direct final rule **revising the beryllium standard for general industry to clarify that it does not apply to materials containing trace amounts of beryllium**. In January 2017, EPA lowered the permissible exposure limit (PEL) for beryllium and adopted other ancillary standards in the face of increasing evidence of the cancer and other health risks associated with beryllium exposure. The rule exempted from the standard materials containing less than 0.1% beryllium by weight only where the employer has objective data demonstrating that employee exposures will remain below the standard's action level. According to OSHA, the agency intended to address only airborne exposures and did not intend to prohibit dermal contact with materials containing less than 0.1% beryllium by weight. OSHA revised the regulation in the direct final rule to clarify that OSHA does not intend the requirements that primarily address dermal contact to apply in processes, operations or areas involving only materials containing less than 0.1% beryllium by weight. The direct final rule and accompanying proposed rule can be found in the May 7, 2018 Federal Register at: www.gpo.gov/fdsys. In a related development, OSHA announced that it is accepting comment on a proposal to extend the compliance dates for certain aspects of the beryllium rule. The proposal will not extend the compliance date for the PEL, exposure assessment, respiratory protection, medical surveillance or medical removal protection provisions, among others. The deadline for submitting comments on the proposed extension is **July 2, 2018**; the proposal can be found in the June 1, 2018 Federal Register.

Implications: The announcements are primarily of interest to employers that are potentially subject to the general industry, beryllium standards (e.g., aluminum refining, coal-fired power plants).

GENERAL

FEDERAL: EPA **issued a new Strategic Plan** outlining the agency's goals and priorities for the years 2018-2022. Consistent with EPA's previously announced "Back-to-Basics" agenda, the plan has three overarching goals: (1) refocus the agency back to its core mission; (2) restore power to the states through cooperative federalism; and (3) lead the agency through improved processes and adhere to the rule of law. The plan identifies objectives for each goal, specifies a strategic measure (i.e., a way of measuring success), lists strategies for achieving each objective, and identifies external factors and emerging issues that may influence the outcome. For example, the first objective—Improve Air Quality—calls for EPA to "[w]ork with states and tribes to accurately measure air quality and ensure that more Americans are living and working in areas that meet high air quality standards." To measure success, the plan calls for reducing the number of nonattainment areas nationwide from 166 to 101 by September 30, 2022. The plan then outlines the strategies for achieving the objective that center around prioritizing activities to support attainment of the NAAQS and implementation of stationary and mobile

source regulations. Other priorities include modernizing and updating aging drinking water, wastewater and stormwater infrastructure and leveraging funds to assist state and local governments in financing these projects, prioritizing/expediting Superfund cleanups and promoting site reuse, and focusing on implementing the recent revisions to the TSCA chemical safety program. With respect to the cooperative federalism goal, the plan focuses on improving federal/state collaboration and increasing transparency and public participation (with an emphasis on listening to and collaborating with impacted stakeholders). The *FY 2018-2022 EPA Strategic Plan* can be found on EPA's website at: www.epa.gov/sites/production/files/2018-02/documents/fy-2018-2022-epa-strategic-plan.pdf.

Implications: The plan provides a broad outline of EPA's regulatory, compliance and enforcement priorities and so is generally of interest to the regulated community.

FEDERAL: EPA announced a renewed emphasis on the agency's self-disclosed violations policies, including its general audit policy and new owner audit policy. In 2000, EPA issued a policy entitled *Incentives for Self-Policing: Discovery, Disclosure, Correction and Prevention of Violations* under which facilities that identify and self-disclose violations within a specified time period can avoid or minimize gravity-based penalties provided they comply with the terms of the policy. EPA also issued policy documents for new owners and small businesses. To facilitate self-disclosure, DEC announced a new eDisclosure portal in 2015 that allows disclosures to be made online; certain simple EPCRA violations can automatically be issued an electronic Notice of Determination confirming that the violations are resolved with no assessment of civil penalties, conditioned on the accuracy and completeness of the submitter's disclosure. With the recent announcement, EPA touted the success of the eDisclosure system, clarified certain misconceptions that may have been discouraging use of the program, and announced plans to supplement guidance concerning the program and issue guidance specifically targeted at the oil and gas sector. The announcement can be found at: www.epa.gov/compliance/epa-announces-renewed-emphasis-self-disclosed-violation-policies.

Implications: The announcement is of general interest to facilities regulated by EPA.

Other Recent Developments (Proposed)

AIR

FEDERAL: EPA proposed the results of its residual risk/periodic technology review of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for friction materials manufacturing facilities. Under CAA § 112, EPA must assess whether any residual risk remains after imposing technology-based NESHAPs and revise the standard as necessary. EPA also must conduct a periodic review of the technology underlying the NESHAP to confirm that the standard remains current. The friction materials manufacturing NESHAP, set forth at 40 CFR Part 63, subpart QQQQQ, applies to major facilities that manufacture friction materials such as automobile brake linings and disc pads using a solvent-based process. After reviewing the existing standard, EPA concluded that the risks remaining after application of the NESHAP were acceptable and that the standards protect public health with an ample margin of safety. EPA also found that there were no cost-effective developments in practices, processes or control technologies and that

no changes in the NESHAP were necessary to address technological improvements. As a result, EPA proposed no revisions to the NESHAP's numerical limits. However, EPA revised the rule to require submission of electronic copies of compliance reports, update the provisions relating to startup, shutdown and malfunction consistent with recent court decisions, and make other technical corrections and clarifications. The deadline for submitting comments on the proposed rule has closed; the proposal can be found in the May 3, 2018 Federal Register at: www.gpo.gov/fdsys.

Implications: According to EPA, there were two facilities in the United States in 2017 that were subject to the friction materials manufacturing standard.

FEDERAL: EPA proposed the results of its residual risk/periodic technology review of the NESHAP for surface coating of wood building products. The wood building products NESHAP, set forth at 40 CFR Part 63, subpart QQQQ, applies to facilities engaged in surface coating of wood building products, i.e., the application of coatings in the finishing or laminating of any wood building product that contains more than 50 percent by weight wood or wood fiber and is used in construction of buildings. Subcategories established by the standard are exterior siding and primed doorskins, flooring, interior wall paneling or tileboard, other interior panels, and doors, windows and miscellaneous. After reviewing the existing standard, EPA concluded that the risks remaining after application of the NESHAP were acceptable and that the standards protect public health with an ample margin of safety. EPA also found that there were no cost-effective developments in practices, processes or control technologies and that no changes in the NESHAP were necessary to address technological improvements. As a result, EPA proposed no revisions to the NESHAP's numerical limits. However, EPA revised the rule to add an alternative compliance demonstration; require submission of electronic copies of compliance reports; update the provisions relating to startup, shutdown and malfunction consistent with recent court decisions; and make other technical corrections and clarifications. The deadline for submitting comments on the proposed rule has closed; the proposal can be found in the May 16, 2018 Federal Register at: www.gpo.gov/fdsys.

Implications: The proposed rule is primarily of interest to wood building products manufacturing facilities.

SOLID WASTE

FEDERAL: EPA is accepting comment on several draft documents intended to assist communities in planning for debris management before a natural disaster occurs. The primary document—entitled *Planning for Natural Disaster Debris Guidance*—provides planning suggestions and considerations to help the whole community (all government, private, nonprofit, community and other stakeholders) prepare for debris management. EPA also is accepting comment on two other guidance documents: *Pre-incident All-hazards Waste Management Plan Guidelines: Four-step Waste Management Planning Process* and *All-hazards Waste Management Decision Diagram*. EPA is accepting comment on the guidance documents until **June 26, 2018**; the notice of availability can be found in the April 27, 2018 Federal Register at: www.gpo.gov/fdsys.

Implications: The draft documents are primarily of interest to communities that could be responsible for managing debris following a flood, fire, hurricane or other natural disaster.

CHEMICAL

FEDERAL: The same day EPA issued the problem formulations for the first 10 chemicals designated for risk assessments under the updated TSCA law, EPA published a **significant new use rule (SNUR) relating to asbestos**, one of the 10 listed chemicals. TSCA authorizes EPA to determine that a use of a chemical is a “significant new use,” compelling persons to submit a SNUR notice to EPA at least 90 days before they manufacture, import or process the chemical substance for that use. EPA is expected to assess the chemical and take appropriate steps based on the results of that assessment. The manufacture, import or processing of the chemical for the particular use is prohibited until the review is complete. With the recent notice, EPA proposed that asbestos is no longer used in numerous products, including adhesives, sealants, roof and non-roof coatings, and roofing felt, among many other products. The determination means that manufacturers, importers and processors planning to use asbestos in these products in the future must notify EPA under the SNUR before proceeding. EPA is accepting comments on the proposed rule until **August 10, 2018**; it can be found in the June 11, 2018 Federal Register at: www.gpo.gov/fdsys.

Implications: The proposed rule is potentially of interest to companies that manufacture products containing asbestos.

OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: OSHA **proposed to update its standard for cranes and derricks in construction** by clarifying each employer’s duty to ensure the competency of crane operators through required training. The current rule, which is set forth at 29 CFR Part 1926, subpart CC, requires employers in the construction industry to ensure that crane operators are certified in one of four ways, the most common of which is by an accredited independent testing organization. After the rule was issued, OSHA received complaints that the one-time certification requirement did not adequately ensure that crane operators could operate their equipment safely, prompting OSHA to delay implementation and impose a provision requiring employers to ensure that operators of equipment covered by the standard are competent to operate safely, and provide training and evaluation as appropriate. OSHA extended the deadline for the rule several times while it considered permanent changes. With the recent rulemaking, OSHA proposed to: permanently maintain the employer’s duty to evaluate each operator before permitting him/her to operate equipment without oversight; eliminate a requirement that an operator be certified by crane capacity in addition to type of crane; and establish minimum requirements for determining operator competency. OSHA is accepting comments on the proposed changes until **June 20, 2018**; the proposal can be found in the May 21, 2018 Federal Register at: www.gpo.gov/fdsys.

Implications: The rule is primarily of interest to employers that utilize cranes and derricks in construction.

GENERAL

FEDERAL: EPA published an advance notice of proposed rulemaking (ANPR) seeking comment on EPA's **practices in considering costs and benefits in the rulemaking process**. Various EPA statutes require or allow EPA to consider relative costs and benefits in deciding whether to adopt a particular rule. However, because the statutory provisions differ significantly in terminology and specificity, much of the detail regarding how to perform cost-benefit analyses has been provided by executive orders and agency guidance. According to EPA, this has led to significant variations in the types of costs/benefits considered (e.g., direct vs. "social" costs, inclusion of "co-benefits"—reductions in pollutants other than those targeted by the particular regulation). In addition, according to EPA, many technical and practical factors have played a role in how EPA conducts cost-benefit analyses, including the state of scientific and economic modeling, quantification methods, and available data and the scope of EPA's authority to collect data. With this ANPR, EPA is seeking comments "regarding perceived inconsistency and lack of transparency in how the Agency considers costs and benefits in rulemaking [and] potential approaches for addressing these concerns." The request is focused around a series of questions, including whether EPA should issue regulations to govern its approach to addressing cost-benefit considerations in future rulemakings. EPA is accepting comment on the ANPR until **July 13, 2018**; the ANPR can be found in the June 13, 2018 Federal Register at: www.gpo.gov/fdsys.

Implications: A change to EPA's approach to conducting cost-benefit analyses could affect all types of major EPA rulemakings and so is potentially of interest to the regulated community generally.

NEW YORK STATE: DEC and the New York State Office of General Services (OGS) are accepting comment on thirteen **draft specifications for procurement of green products by the State government**. Governor David Patterson issued an executive order in 2008 creating the State Green Procurement and Agency Sustainability program, which established a committee charged with several tasks, including development of green product specifications for priority categories of commodities purchased by the State. The specifications identify product criteria that will reduce or eliminate the use or release of toxic substances; minimize the discharge of pollutants into the environment; minimize the volume and toxicity of packaging; maximize the use of recycled content and sustainably managed renewable resources; and provide other environmental and health benefits. Pursuant to the order—which was continued by Governor Cuomo—the Committee is seeking comments on eight new specifications covering adhesives, brake pads, imaging equipment, janitorial paper, lubricants, paint, pre-packaged snow melt and de-icing products, and trash bags. In addition, the Committee is seeking comment on revisions to five existing specifications for floor coverings, pest management for indoor spaces, pest management for outdoor spaces, reusable bags, and state-funding lodging. OGS is accepting comments on the draft specifications until **October 1, 2018**; if no suggested edits are received by that date, the specifications will take effect as drafted. If suggested edits or negative comments are received, the Committee will consider the comments and make any appropriate edits. Copies of the draft specifications can be found at: www.ogs.ny.gov/greenny/green-tentative.asp

Implications: The draft procurement specifications are potentially of interest to companies that seek to supply products to the State government in the listed product categories.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

June 20, 2018: Deadline for submitting comments on OSHA's proposed revisions to qualification requirements for crane and derrick operators in construction. See the May 21, 2018 Federal Register at www.gpo.gov/fdsys for details.

June 24, 2018: Deadline for submitting comments on DEC's proposal to rescind its regulations to control the spread of the emerald ash borer. See the April 25, 2018 State Register at <https://docs.dos.ny.gov/info/register/2018/april25/toc.html> for details.

June 26, 2018: Deadline for submitting comments on EPA's draft guidance documents relating to planning for management of natural disaster debris. See the April 27, 2018 Federal Register at www.gpo.gov/fdsys for details.

July 2, 2018: Deadline for submitting comments on OSHA's proposed extension of the compliance dates for certain aspects of its general industry beryllium rule. See the June 1, 2018 Federal Register at www.gpo.gov/fdsys for details.

July 13, 2018: Deadline for submitting comments on EPA's ANPR concerning its approach to conducting cost-benefit analyses of rulemakings. See the June 13, 2018 Federal Register at www.gpo.gov/fdsys for details.

July 16, 2018: Public hearing on proposed revisions to various rules governing emissions from major electric generating facilities scheduled for 11:00 a.m. at DEC's central office at 625 Broadway, Public Assembly Room 129A/B. Additional hearings will be held in mid/late July in Long Island City and Avon.

July 23, 2018: Deadline for submitting comments on EPA's proposal to retain the existing one-hour SO₂ NAAQS. The proposal can be found in the June 8, 2018 Federal Register at www.gpo.gov/fdsys.

July 26, 2018: Deadline for submitting comments on EPA's draft problem formulation documents for the first 10 chemicals undergoing TSCA risk evaluations and EPA's draft document entitled *Application of Systematic Review in TSCA Risk Evaluations*. See the June 11, 2018 Federal Register at www.gpo.gov/fdsys for details.

July 29, 2018: Deadline for submitting comments on DEC's proposed revisions to various rules governing emissions from major electric generating facilities. See DEC's website at www.dec.ny.gov/regulations/propregulations.html#public for details.

July 30, 2018: Deadline for submitting comments on EPA's proposed rescission of various 2017 changes to the RMP rules. See the May 30, 2018 Federal Register at www.gpo.gov/fdsys for details.

August 10, 2018: Deadline for submitting comments on EPA's proposed significant new use rule requiring review of certain future uses of asbestos. See the June 11, 2018 Federal Register at www.gpo.gov/fdsys for details.

August 16, 2018: Deadline for submitting comments on EPA's proposed rule requiring public access to the data/models underlying pivotal scientific studies offered to support significant rulemaking actions (extended from May 30, 2018). See the April 30, 2018 Federal Register at www.gpo.gov/fdsys for details.

October 1, 2018: Deadline for submitting comments on OGS's draft green procurement specifications for various products purchased by State government. The draft specifications can be found at www.ogs.ny.gov/green/y/green-tentative.asp.