ENVIRONMENTAL BREAKFAST CLUB
REGULATORY SUMMARY

January 8, 2020

Prepared by:
Elizabeth Morss
Young/Sommer LLC
5 Palisades Drive
Albany, NY 12205
(518) 438-9907, ext. 232
emorss@youngsommer.com
www.youngsommer.com

Final Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
AIR			
FEDERAL **Accidental Release Prevention Requirements: Risk Management Program under Clean Air Act** 40 CFR Part 68 84 Fed. Reg. 69834 (Dec. 19, 2019)	EPA **rescinded key aspects of its 2017 revisions to the risk management plan (RMP) regulation** contained in 40 CFR Part 68.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 regulation, imposing additional accident prevention requirements, requiring periodic notification and field exercises, and increasing the availability of information. Following the change in administration, EPA postponed the effective date of the revised regulation while reconsidering the changes at the behest of certain states and industry groups. Following reconsideration, EPA modified the 2017 rule as follows. • ***Accident prevention program.*** EPA rescinded virtually all of the requirements added to the accident prevention portion of the RMP rule, including provisions requiring a compulsory root cause analysis and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 EPA also rescinded provisions requiring facilities in the paper manufacturing, petroleum and coal products manufacturing, and chemical manufacturing industries to evaluate safer production alternatives as part of their hazard assessment. • ***Emergency response.*** EPA pulled 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 eliminated the minimum frequency requirement and gave facilities greater flexibility with respect to content and documentation. While EPA retained a requirement that owners/operators provide emergency response organizations with key plans and other information, it added provisions designed to protect confidential information. • ***Public information availability.*** EPA rescinded the requirement that all RMP facilities provide certain basic information to the public upon request. Although the agency retained the requirement that the facility hold a public meeting within 90 days of a reportable accident, it limited the requirement to incidents with off-site impacts. Finally, EPA significantly delayed various compliance dates. The rule can be found in the December 19, 2019 Federal Register at: www.govinfo.gov.	The rule is primarily of interest to facilities required to prepare RMPs. According to EPA, the changes reflect issues raised by three petitions for reconsideration of the RMP amendments received by the agency as well as other issues identified during its review of the rule. EPA rescinded most of the 2017 accident prevention provisions after concluding that the majority of accidents occur at a small number of facilities. In light of this information, EPA determined that a more reasonable and practical approach is to emphasize case-specific oversight over those facilities that are performing poorly in place of regulatory changes that affect everyone. With respect to the information availability provisions of the rule, EPA argued that changes were necessary to address important security concerns and that the new provisions reflected a proper balance between the public's need for chemical hazard information and security concerns.	The rule took effect December 19, 2019.

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AIR			
NEW YORK STATE **Nitrogen Oxide (NOx) Emission Rate Limits for Simple Cycle and Regenerative Combustion Turbines** 6 NYCRR Subpart 227-3	DEC issued strict **nitrogen oxide (NOx) emission limits for simple cycle and regenerative combustion turbines (SCCTs)**. These so-called "peaking units" are typically run during periods of peak electricity demand in the summer when ozone levels are highest. Data gathered by DEC show that the older SCCTs produce only 36% of the electricity from these units but generate 96% of their NOx emissions. The regulation—which is set forth at 6 NYCRR Subpart 227-3—phases in strict ozone season (i.e., summertime) NOx emission standards for these units over a period of approximately five years beginning with submission of a plan identifying the compliance option selected by the owner to meet the standards. All SCCTs must meet a NOx emission limit of 100 parts per million on a dry volume basis (ppmvd) as of May 1, 2023; the limit drops to 25 ppmvd for gaseous fuels and 42 ppmvd for distillates or other liquid fuel as of May 1, 2025. Options for complying with the limits during the ozone season include averaging emissions with approved energy storage or renewable energy sources or committing not to operate the units. Because the units are not easy to retrofit with emission controls, DEC anticipates that most owners will choose to replace or shut down their non-compliant SCCTs. Sources subject to the new rule will continue to be regulated under 6 NYCRR Subpart 227-2 outside the ozone season. The regulations can be found on DEC's website at: www.dec.ny.gov/regulations/116131.html.	The regulation applies to SCCTs with a nameplate capacity of 15 megawatts or greater that inject power into the grid. It does not apply to "blackstart resources"—electric generating units used to bring a facility from shut down to operational without reliance on external supplies or the electrical system. Affected units are primarily located at downstate power plants, many of which operate SCCTs to provide power during times of peak energy demand. According to DEC, the emission reductions called for by the regulations are necessary to help New York State attain the 2008 and 2015 ozone national ambient air quality standards (NAAQS).	The rule takes effect January 16, 2020. DEC proposed the regulation in February 2019 and made additional revisions available in August 2019. The final draft contained no changes from the August 2019 revised proposal.

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AIR			
NEW YORK STATE **Volatile Organic Compound Content Limits for Architectural and Industrial Maintenance Coatings** 6 NYCRR Part 205	DEC **amended its standards governing the volatile organic compound (VOC) content of architectural and industrial maintenance (AIM) coatings** to add new coatings, lower the VOC content of other coatings and make other changes to the rule. AIM coatings are coatings, such as paints, that are applied to stationary structures or their appurtenances at the site of installation, portable buildings at the site of installation, pavements, or curbs. Under 6 NYCRR Part 205, manufacturers of AIM coatings must comply with the VOC content limits for their particular coating as well as with container labeling, recordkeeping, reporting and other requirements. With the recent rulemaking, DEC revised Part 205 as follows: • Added 12 new coating categories to the rule, lowered the VOC content limits for 12 coating categories, and eliminated 15 categories from the rule by consolidating them under other coating categories. The 12 new categories are aluminum roof, basement specialty coatings, concrete/masonry sealer, conjugated oil varnish, driveway sealer, reactive penetrating sealer, reactive penetrating carbonate stone sealer, stone consolidants, tub and tile refinish, waterproofing membranes, wood coatings, and zinc-rich primers. • Updated definitions to reflect new/revised coating categories and make other changes. • Revised the existing one-quart exemption to eliminate the exemption for floor coatings and prohibit the practice of bundling quart containers intended to be combined and applied to eliminate a major loophole in the regulation. • Updated the labeling requirement to reflect the new and removed coating categories. • Clarified the rules for calculating VOC content, which differ based on whether the label instructions call for or prohibit thinning or involve multi-component products or coatings containing silanes, siloxanes, or other ingredients that generate VOCs during curing. The new standards will take effect January 1, 2021. Paints manufactured before that date can be sold through May 1, 2023. The regulations can be found on DEC's website at: www.dec.ny.gov/regulations/116139.html.	The rule applies to manufacturers of AIM coatings. Coating users are affected to the extent the regulation limits the types of AIM coatings available for sale. According to DEC, the stricter VOC content limits are needed to help New York State meet the 2008 and 2015 ozone NAAQS.	The rule takes effect January 11, 2020. In response to public comment, DEC revised the proposed regulation to extend the sell through date from December 31, 2022 to May 1, 2023. DEC also replaced its proposal to eliminate the one-quart exemption altogether with one that eliminates the exemption for floor coatings only. DEC also revised the exemption to expressly prohibit the practice of bundling quart containers together that are intended to be combined and applied.

Citation	Summary	Implications	Schedule/Notes
CHEMICAL			
FEDERAL **Identification of High Priority Substances under TSCA for Purposes of Risk Evaluation** 84 Fed. Reg. 71924 (Dec. 30, 2019)	EPA **designated 20 chemicals as high priority substances for purposes of conducting risk evaluations** under the 2016 revisions to the Toxic Substances Control Act (TSCA). While the original TSCA statute focused on assessing chemicals before they entered the marketplace, the 2016 reforms require EPA to systematically prioritize and assess existing chemicals. In July 2017, EPA adopted regulations establishing a basic process and schedule for conducting the review. EPA followed up the regulations with a guidance document—entitled *A Working Approach for Identifying Potential Candidate Chemicals for Prioritization*—that explained how EPA will fulfill its obligation to identify the 20 high priority chemical substances required to undergo risk evaluation. Earlier this year, EPA sought comment on the first list of 20 chemicals proposed for risk evaluation. The accompanying notice summarized the approach used by EPA to support the proposed designations and provided instructions for accessing the chemical-specific information underlying the proposed designation for each chemical. The chemicals were screened based on various criteria, including their hazard and exposure potential, persistence and bioaccumulation, potentially exposed or susceptible subpopulations, storage near significant sources of drinking water, conditions of use, and volume of substance manufactured or processed. After reviewing the comments received, EPA finalized the list of 20 high priority substances, which includes phthalate esters, chlorinated solvents, halogenated flame retardants and other chemicals, including formaldehyde. The notice summarizing the final list includes an overview of the assessment process, together with a summary of the general comments received concerning the process. Separate dockets have been established for each high priority chemical designated for review. The notice announcing the final list of high priority chemicals can be found in the December 30, 2019 Federal Register at: www.govinfo.gov.	The notice is potentially of interest to companies that manufacture, import, process, distribute, use or dispose of the particular chemicals identified as high priority. Under the amended TSCA statute, after classifying a substance as "high priority," EPA has approximately one year to complete the scoping process and decide whether to conduct a risk evaluation and an additional two years to complete the evaluation and decide whether the chemical presents an unreasonable risk to humans and/or the environment. If EPA determines that a particular substance poses an unreasonable risk, it must adopt measures to mitigate that risk within two years.	The designation of high priority substances for risk evaluation took effect December 20, 2019.

Citation	Summary	Implications	Schedule/Notes
ENVIRONMENTAL REVIEW			
NEW YORK STATE **Assessing and Mitigating Visual and Aesthetic Impacts** Program Policy DEP-00-2	DEC revised and reissued its visual assessment program policy, now entitled ***Assessing and Mitigating Visual and Aesthetic Impacts***, which establishes a standardized method for evaluating the significance of visual and aesthetic impacts under the State Environmental Quality Review Act (SEQRA). The program policy—which applies when an action is proposed within the viewshed of a designated aesthetic resource and DEC is lead agency— establishes a six-step process for evaluating a project's visual and aesthetic impacts: 1. ***Verify the project sponsor's inventory of aesthetic resources***. A list of categories of aesthetic resources of statewide significance is included in the policy. Examples include properties of historic significance, state parks, heritage areas, the state forest preserve, and national wildlife refuges, among many others. However, not all individual resources included in the listed categories were designated for their aesthetic value. The test of significance should focus on the impairment of the aesthetic quality associated with a resource not its mere presence within a viewshed. DEC staff may consider aesthetic resources of local concern only if officially designated in a zoning law or comprehensive plan. 2. ***Verify the sponsor's inventory of viewer characteristics, visual character and aesthetic value***. During this step, DEC establishes a "baseline" assessment of the resource's visual character, including who is using the resource and why it is important aesthetically. 3. ***Verify the sponsor's visual assessment*** via methods such as desktop analyses using line of site profiles and computer-generated viewsheds, field verification techniques, and computer visual techniques such as photo and video simulations. The program policy includes specific guidance on determining distance limits for visual analysis. 4. ***Determine or verify the project sponsor's assessment of the potential significance of the visual impact***. Per DEC, the aesthetic significance of a visual impact is based on magnitude (severity, size and extent of action) and importance (how many people may be impacted by the project, its geographic scope and additional social or environmental consequences). 5. ***If a significant visual impact is identified, determine the measures that may be needed to avoid, mitigate or offset that impact***. 6. ***Enforce mitigation measures***. The program policy can be found on DEC's website at: www.dec.ny.gov/permits/115147.html.	The program policy applies to DEC staff when DEC is lead agency under SEQRA or when no lead agency has been established, as in the case of an unlisted action where DEC staff is responsible for making a determination of significance. The policy also may be used where an agency other than DEC is lead agency. The draft updates DEC's current visual assessment program policy, which was issued in 2000. Major changes include: updating the inventory of aesthetic resources; clarifying how visual impacts fit into the SEQRA framework; providing guidance on establishing a baseline to assess visual impact; clarifying the process for making a determination of significance; and revising the guidance for assessing aesthetic resources of local concern.	The revised policy took effect **December 13, 2019**. In response to public comment, DEC revised the policy to: clarify the provisions governing lighting; encourage coordination with agencies responsible for historic resources; remove references to wind turbines and power plants that are regulated under Article 10 of the Public Service Law; and clarify that all structures, regardless of size, are subject to analysis. DEC specifically rejected suggestions that the policy cover local visual impacts beyond those that have officially been recognized in zoning codes or comprehensive plans

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GENERAL			
NEW YORK STATE **Key Environmental Legislation Signed**	With just a few weeks remaining before expiration, Governor Andrew Cuomo **signed a series of environmental laws adopted during the last session**, including a bill needed to implement the Climate Leadership and Community Protection Act (CLCPA). The law (A.1564) creates a permanent environmental justice (EJ) advisory group comprised of representatives from community organizations, businesses, local government officials, and national/state environmental organizations, researchers, educators and/or the general public. The group is responsible for developing a model EJ policy applicable to state agencies to ensure that no group of people, including a racial, ethnic or socioeconomic group, bears a disproportionate share of negative environmental impacts. Also, the law requires establishment of an Environmental Justice Interagency Coordinating Council comprised of the heads of key state agencies to coordinate EJ activities among agencies. Other bills recently signed by the Governor include: • S.04351: This bill establishes a post-consumer paint collection program that requires architectural paint producers that sell paint at retail to submit a plan to DEC for establishing a post-consumer collection program and eventually prohibit retail sales unless the producer or its organization is implementing an approved program plan. • S.2139B: Requires DEC to establish limits on the mercury content of lamps (i.e., fluorescent bulbs) and prohibits the sale of lamps that fail to meet those limits. The law includes not-to-exceed mercury content limits for various types of bulbs. • A.00445A: Adds a new section to the Executive Law banning the discharge or use of class B firefighting foam that contains intentionally added perfluoroalkyl and polyfluoroalkyl substances (PFAS), with exceptions for terminals, oil refineries and chemical plants and where the substances are required by federal law. • A.6295A: Amends the ECL to prohibit the sale of household cleaning products, cosmetics and personal care products containing 1,4-dioxane, which is typically formed as a contaminant during the production process. The goal of the law is to reduce the amount of 1.4-dioxane entering New York's drinking water. Information about recently enacted legislation can be found on the Assembly's website at: assembly.state.ny.us.	Enactment of the EJ legislation (A.1564) triggers the CLCPA since the effective date of the State's landmark climate change law is linked to enactment of the EJ bill. The remaining bills reflect an increased emphasis on reducing environmental risks by prohibiting the production/use of potentially hazardous chemicals/products or requiring the product manufacturer to implement programs to manage potentially hazardous products at the end of their useful lives.	

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
CLIMATE CHANGE			
NEW YORK STATE **Hydrofluorocarbon Standards and Reporting** 6 NYCRR Part 494	DEC has proposed regulations **barring certain uses of hydrofluorocarbons (HFCs) in refrigerants, aerosol propellants, and foam-blowing agents** in the wake of an EPA decision to roll back a comparable federal prohibition under the Significant New Alternatives Policy (SNAP) program. The SNAP program was adopted under Title VI of the CAA, which regulates the manufacture and use of substances that deplete the ozone layer. Under SNAP, EPA reviews and approves substitutes for hydrochlorofluorocarbons (HCFCs) and other ozone-depleting substances before they are introduced into commerce. Prompted by concerns about the global warming impact of HFCs that had previously been approved as substitutes for HCFCs, EPA conducted a new review and concluded that the HFCs were no longer acceptable substitutes for certain products because of their high global warming potential. In a challenge to that rule, a federal court held that EPA did not have the authority under the SNAP program to require manufacturers to replace HFCs with a substitute substance because HFCs are not ozone-depleting substances. Thereafter, EPA announced that it would not apply the HFC listings in the 2015 rule pending a rulemaking to address the court's remand. DEC's proposed new regulation, to be set forth at 6 NYCRR Part 494, would prohibit the use of specific substances in new or retrofitted equipment and new consumer products consistent with the original EPA SNAP rulemaking. The rule incorporates key definitions from the SNAP rule, the list of prohibited HFC end uses, a list of exemptions from the ban, and disclosure and recordkeeping requirements for manufacturers/users of products that could potentially contain the banned products. The proposed regulation can be found on DEC's website at: www.dec.ny.gov/regulations/119026.html.	The proposed rule is primarily of interest to manufacturers and users of refrigerants, refrigeration and air conditioning equipment, aerosol propellants and foam-blowing agents that contain HFCs or could potentially contain HFCs. According to DEC, the majority of affected businesses are in retail food operations. However, the impact on these businesses is expected to be minimal because they are already in the process of replacing equipment pursuant to the phase-down of ozone-depleting substances. Most of the costs of the new regulation will be incurred by manufacturers of stationary air conditioning equipment and polystyrene foam products.	DEC is accepting comment on the proposed regulation until **March 16, 2020.** A public hearing on DEC's proposed HFC standards and reporting requirements is scheduled for March 4, 2020 at 12:30 p.m. at DEC's Central Office, 625 Broadway, Room 129A/B in Albany. Additional hearings are scheduled in Rochester and Long Island City.

Citation	Summary	Implications	Schedule/Notes
HAZARDOUS WASTE			
NEW YORK STATE **Initiative to Revise Hazardous Waste Regulations** 6 NYCRR Parts 370-374 and 376	DEC announced a series of additional workshops relating to **possible changes to the state hazardous waste regulations** relating to EPA's 2016 hazardous waste generator improvement rule and its 2019 rule relating to hazardous waste pharmaceuticals. • ***Hazardous waste generator improvements rule (2016).*** This rule restructured the hazardous waste generator provisions to make them more user friendly and address regulatory gaps. Key provisions include: revising the definition of conditionally exempt small quantity generator and changing the name of the category to very small quantity generator (VSQG); revising the definition of small quantity generator (SQG); adopting definitions of large quantity generator (LQG) and central accumulation area; adding procedures to address episodic waste generation by VSQGs and SQGs; authorizing waivers from the 50-foot setback requirement for LQGs managing ignitable and reactive waste; allowing consolidation of waste from VSQGs by a LQG under common control; requiring marking containers and tanks of hazardous waste to indicate the hazards of their contents; requiring SQGs to notify EPA every four years; and requiring LQGs to submit a quick reference guide of their contingency plan to local emergency responders. • ***Hazardous waste pharmaceuticals (2019).*** EPA adopted a rule addressing the management of hazardous waste pharmaceuticals by health care facilities and reverse distributors (companies that receive and manage unused pharmaceuticals from health care facilities) and establishing new procedures for managing drugs that are both hazardous wastes and controlled substances regulated by the Drug Enforcement Administration. The rule also prohibits health care facilities from disposing of waste pharmaceuticals down the drain as of August 21, 2019. The rules subject to the planned workshop are part of a larger initiative to update the State's hazardous waste regulations to include rulemakings adopted by EPA since 2013, including: • ***Solvent contaminated wipes rule (2013).*** EPA revised the definition of solid waste to conditionally exclude solvent-contaminated wipes that are cleaned and reused, and revised the definition of hazardous waste to conditionally exclude wipes that are disposed. • ***Carbon dioxide sequestration rule (2014).*** This rule excludes carbon dioxide waste streams from power plants and other industrial sources from the definition of hazardous waste provided certain criteria are met. • ***Hazardous waste electronic manifest (e-manifest) rules (2014; 2018).*** The e-manifest system launched nationwide on June 30, 2018. DEC must adopt the e-manifest regulations to conform to the federal program. • ***Definition of solid waste rule (as amended January 2015).*** The rule is intended to promote the recycling of hazardous secondary materials and addresses issues of sham recycling. Information about the possible changes can be found at: www.dec.ny.gov/regulations/117115.html.	The workshops are potentially of interest to anyone regulated under the hazardous waste program. Certain requirements—such as the e-manifest program—are already being implemented while others require DEC rulemaking. In addition to the listed rules, DEC is reviewing recent changes to the federal hazardous waste import/export requirements. DEC also is taking comment on the following EPA rulemakings: a 2018 proposal to add aerosol cans to the universal waste regulations; a 2018 interim final rule addressing safe management of recalled airbags; and a 2019 proposal to modernize the rules for making ignitable liquid determinations. DEC also is considering certain state-only changes.	DEC has scheduled a series of workshops on the generator improvement and pharmaceutical rule changes in Depew, Cortland, and Rochester in January/February and is planning additional workshops in the Lower Hudson Valley and Long Island area. DEC also is accepting written comments on the potential revisions.

Citation	Summary	Implications	Schedule/Notes
REMEDIATION			
FEDERAL **Financial Responsibility Requirements under CERCLA § 108(b) for Facilities in the Petroleum and Coal Products Manufacturing Industry** 40 CFR Part 320 84 Fed. Reg. 70467 (Dec. 23, 2019)	EPA **proposed not to impose financial responsibility requirements for facilities in the petroleum and coal products manufacturing industry under Section 108(b) of the Comprehensive Environmental Response, Compensation and Liability Act** (CERCLA). Section 108(b) requires EPA to develop regulations that require certain classes of facilities to establish evidence of financial responsibility and provide 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 response to litigation, EPA agreed to a schedule for issuing rulemakings on financial assurance requirements for the hard rock mining, chemical manufacturing, petroleum and coal products manufacturing, and electric power generation, transmission and distribution industries. With the recent rulemaking, EPA proposed that financial assurance under CERCLA § 108(b) is not necessary for the petroleum and coal products manufacturing industry. According to EPA: facilities in the industry are already subject to extensive environmental regulation, limiting their potential impact on the taxpayer; the industry is in a relatively stable financial position with a low default risk; existing state and federal financial responsibility programs minimize long-term financial risks; and the industry has implemented voluntary practices that reduce potential contamination. In light of these developments, EPA concluded that the degree and duration of risk posed by the industry does not warrant imposition of financial responsibility requirements under CERCLA § 108(b). The proposed finding can be found in the December 23, 2019 Federal Register at: www.govinfo.gov.	The proposed finding is of greatest interest to the petroleum and coal products manufacturing industry, i.e., facilities such as refineries that are engaged in the transformation of crude petroleum and coal into usable products. If finalized, the finding means EPA will not require sources in the industry to provide financial assurance to cover the costs of possible future remediation. The finding does not limit EPA's ability to take a response or enforcement action under CERCLA and require financial responsibility as part of such an action.	EPA is accepting comment on the proposed finding until **February 21, 2020.**

Other Recent Developments (Final)

REMEDIATION

FEDERAL: EPA issued **interim recommendations for addressing groundwater contaminated with PFOA and PFOS** under federal cleanup programs. Perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS) are synthetic fluorinated organic chemicals belonging to a large group of PFAS chemicals used in various products including surface treatments for soil/stain/water resistance and in specialized applications such as fire suppression. The chemicals, which are highly persistent in the environment, have been discovered in drinking water at sites in New York, including Hoosick Falls and Newburgh, and have been the source of widespread concern. EPA's interim guidance establishes thresholds for action under federal cleanup programs involving groundwater used or potentially used as a drinking water supply. As a preliminary matter, EPA established a screening level of 40 parts per trillion (ppt). This represents the level below which no further action or study is warranted. EPA also established a preliminary remediation goal (PRG) of 70 ppt. The PRG is intended as an initial target for cleanup and can be adjusted on a site-specific basis as more information becomes available. Where stricter state or tribal laws or regulations qualify as "applicable or relevant and appropriate requirements" (ARARs) under CERCLA, those standards should be used to develop PRGs. The interim guidance is part of a larger federal PFAS action plan that includes potentially establishing maximum contaminant levels under the Safe Drinking Water Act and requiring monitoring of PFAS in drinking water, developing new analytical methods to detect PFAS, and developing additional tools for communicating with the public regarding the risks of PFAS. Information about EPA's PFAS Action Plan, including the interim guidance, can be found at: www.epa.gov/pfas.

Implications: The guidance is primarily of interest to owners/operators of remedial sites with PFAS contaminated groundwater that are not governed by stricter state or tribal ARARs.

Other Recent Developments (Proposed)

AIR

FEDERAL: EPA is proposing **changes to its new source review (NSR) regulations to correct and update the rule**. The rulemaking encompasses both the nonattainment NSR and prevention of significant deterioration (PSD) regulations. Key changes include: (1) correcting typographical, grammatical and punctuation errors and incorrect or outdated cross-references; (2) removing text to address court vacaturs. These changes include deleting language remaining after the vacatur of the 2003 equipment replacement rule while adding back certain provisions relevant to the definition of replacement unit in the regulations; deleting provisions relating to clean units and pollution control projects in fulfillment of a 2007 court decision; and deleting references to vacated provisions relating to the regulation of greenhouse gases under NSR; (3) revising the regulations to address statutory requirements included in the 1990 CAA Amendments that were never incorporated into the NSR regulations. These include changing the major source threshold for municipal solid waste incinerators and adding a reference to 40 CFR Part 63 (in addition to Part 61) to clarify that PSD and NSR do not apply to

hazardous air pollutants (HAPs) unless they are also criteria or other non-HAP pollutants regulated under other CAA programs; and (4) delete outdated NSR exemptions. EPA is accepting comments on the proposed rule until **January 21, 2020**; it can be found in the December 20, 2019 Federal Register at: www.govinfo.gov.

Implications: The corrections are of general interest to major sources of criteria contaminants potentially regulated under NSR.

FEDERAL: EPA proposed the **results of its review of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for miscellaneous organic chemical manufacturing (MON)** following a residual risk/periodic technology review. 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 MON, set forth at 40 CFR Part 63, subpart FFFF, regulates hazardous air pollutant emissions from miscellaneous organic chemical manufacturing process units at major sources. Specific HAP sources regulated by the MON include process vents, storage tanks, transfer racks, equipment leaks, wastewater streams, and heat exchange systems. After reviewing the existing standard, EPA concluded that the risks remaining after application of the NESHAP are unacceptable and proposed various changes, including adding requirements for ethylene oxide emissions from storage tanks, process vents and equipment leaks. With respect to the technology review, EPA found that there were cost-effective developments in practices, processes or control technologies relating to heat exchange systems and leak control. EPA also proposed new monitoring and operational requirements for flares that control ethylene oxide emissions as well as those that control emissions from processes involving olefins and poly olefins. Consistent with other recent NESHAP rulemakings, EPA proposed to require submission of electronic copies of compliance reports, including performance test and performance evaluation results, and delete the exemption for excess emissions during startup, shutdown and malfunction events in favor of alternative work practice standards for certain events. EPA is accepting comment on the proposed rule until **February 18, 2020** (extended from January 31, 2020); the proposal can be found in the December 17, 2019 Federal Register: www.govinfo.gov.

Implications: EPA estimates that as of 2018 there were 201 facilities subject to the MON.

CHEMICAL

FEDERAL: EPA is accepting comment on guidance **clarifying EPA's approach to evaluating new chemicals** under Section 5 of TSCA. TSCA Section 5 requires chemical manufacturers/importers to provide a premanufacture notice or a significant new use notice before introducing a chemical into commerce. EPA reviews the notice and may make one of five determinations based on the available data concerning the chemical: chemical or new use presents an unreasonable risk of injury to health or the environment; available information is insufficient to allow EPA to make the necessary determination; in the absence of sufficient information, the chemical or significant use may present an unreasonable risk; the chemical is or will be produced in substantial quantities and enters the environment and/or presents a significant or substantial potential for exposure; or the chemical or significant new use is unlikely to present an unreasonable risk. The new document—entitled *TSCA New Chemical Determinations: A Working Approach for Making Determinations under TSCA Section 5*—is intended to increase the transparency of the new chemicals program in light of changes to the statute adopted

as part of the 2016 overhaul of TSCA. The document clarifies key concepts under Section 5, including conditions of use, information sufficiency, unreasonable risk, testing requirements, and scientific standards and evidence. The guidance goes on to discuss the three key questions that EPA considers in reaching a determination under TSCA section 5(a)(3): (1) What are the intended, known and reasonably foreseen conditions of use? (2) Does EPA have sufficient information to perform a reasoned evaluation? and (3) Can EPA address information deficiencies or risk concerns for reasonably foreseen conditions through the issuance of a significant new use rule? The guidance document can be found at: www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/approach-making-determinations-tsca. EPA is accepting comments on the guidance until **February 18, 2020**.

Implications: The guidance is primarily of interest to chemical manufacturers and importers.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

January 21, 2020: Deadline for submitting comments on proposed revisions to effluent limitations guidelines and standards for the steam electric power generating point source category. See the November 22, 2019 Federal Register at www.govinfo.gov for details.

January 21, 2020: Deadline for submitting comments on EPA's proposed updates/corrections to its NSR regulations. See the December 20, 2019 Federal Register at www.govinfo.gov for details.

January 21, 2020: Deadline for submitting comments on DEC's proposed OGC-11: Order on Consent Enforcement Policy (due 5:00 p.m.). The draft program policy can be found on DEC's website at www.dec.ny.gov/regulations/2381.html.

January 27, 2020: Public hearing on proposed plastic bag reduction and recycling rule to be held at 1:00 p.m. at DEC's Central Office, 625 Broadway, Room 129, Albany.

January 28, 2020: Deadline for submitting comments on EPA's proposed corrections to the TRI reporting requirements. See the November 29, 2019 Federal Register at www.govinfo.gov for details.

January 31, 2020: Deadline for submitting comments on DEC's proposed update to its procedures for enforcement and related hearings. See DEC's website at www.dec.ny.gov/regulations/118492.html for details.

February 3, 2020: Deadline for submitting comments on DEC's proposed plastic bag reduction and recycling rule. See DEC's website at www.dec.ny.gov/regulations/118810.html for details.

February 12, 2020: Deadline for submitting comments on EPA's proposed revisions to the SDWA's lead and copper rule (extended from January 13, 2020). See the November 13, 2019 Federal Register at www.govinfo.gov for details.

February 18, 2020: Deadline for submitting comments on EPA's proposed residual risk/periodic technology review finding for the miscellaneous organic chemical manufacturing NESHAP (extended from January 31, 2020). See the December 17, 2019 Federal Register at www.govinfo.gov for details.

February 18, 2020: Deadline for submitting comments on EPA's guidance entitled *TSCA New Chemical Determinations: A Working Approach for Making Determinations under TSCA Section 5*. See EPA's website at www.epa.gov/reviewing-new-chemicals-under-toxic-substances-control-act-tsca/approach-making-determinations-tsca for a copy of the guidance.

February 21, 2020: Deadline for submitting comments on EPA's decision not to impose financial responsibility requirements on the petroleum and coal products manufacturing industry under CERCLA § 108(b). See the December 23, 2019 Federal Register at www.govinfo.gov for details.

March 4, 2020: Public hearing on DEC's proposed HFC standards and reporting requirements scheduled for 12:30 p.m. at DEC's Central Office, 625 Broadway, Room 129A/B in Albany. Additional hearings are scheduled in Rochester and Long Island City.

March 16, 2020: Deadline for submitting comments on DEC's proposed HFC standards and reporting requirements. See DEC's website at www.dec.ny.gov/regulations/119026.html for details.