ENVIRONMENTAL BREAKFAST CLUB
REGULATORY SUMMARY

April 1, 2020

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Final Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
AIR			
FEDERAL **National Emission Standards for Hazardous Air Pollutants Residual Risk/Periodic Technology Review** 40 CFR Part 63 85 Fed. Reg. 13524 (Mar. 9, 2020) (stationary combustion turbines); 85 Fed. Reg. 14526 (Mar. 12, 2020) (asphalt processing and asphalt roofing manufacturing); 85 Fed. Reg. 15608 (Mar. 18, 2020) (solvent extraction for vegetable oil processing); 84 Fed. Reg. 15960 (Mar. 20, 2020) (boat manufacturing and reinforced plastic composites production).	EPA finalized the **results of its residual risk/periodic technology review of the National Emission Standards for Hazardous Air Pollutants** (NESHAP) for the following major source categories found at 40 CFR Part 63: • **Stationary Combustion Turbines** (subpart YYYY): Applies to simple cycle stationary combustion turbines, regenerative/recuperative cycle stationary combustion turbines, or combustion portion of any stationary combined cycle steam/electric generating system. • **Asphalt Processing and Asphalt Roofing Manufacturing** (subpart LLLLL): Applies to blowing stills, asphalt storage tanks and asphalt loading racks at asphalt processing facilities and coating mixers, coaters, saturators, wet loopers, asphalt storage tanks and sealant and adhesive applicators at asphalt roofing manufacturing facilities. • **Solvent Extraction for Vegetable Oil** (subpart GGGG): Applies to process of removing oil from oil seeds through direct contact with an organic solvent. • **Boat Manufacturing** (subpart VVVV): Applies to fugitive emissions from HAPs evaporating from resins, gel coats, solvents, adhesives, and surface coatings used in manufacturing processes at fiberglass and aluminum boat manufacturing sources. • **Reinforced Plastic Composites Production** (subpart WWWW): Applies to manufacturing of reinforced and non-reinforced plastic composite products and production of plastic molding compounds used in the production of plastic composite products. After reviewing each existing major source standard, EPA concluded under Clean Air Act (CAA) § 112(f) that the risks remaining after application of the NESHAP were acceptable and that the standard protects public health with an ample margin of safety. EPA found under CAA § 112(d)(6) that there were no cost-effective developments in practices, processes or control technologies and that no changes in the NESHAPs were necessary to address technological improvements. EPA also revised the rules relating to startup, shutdown and malfunction consistent with judicial rulings. In addition, EPA required facilities covered by these NESHAPs to submit electronic copies of required performance test results and other reports and made other updates and corrections to each of the listed NESHAPs. The rules can be accessed in the listed Federal Registers at: www.govinfo.gov.	The findings/revisions are primarily of interest to owners/operators of facilities in the listed source categories. EPA estimates that the categories cover sources in the categories identified as follows: stationary combustion turbines, 243 facilities; asphalt processing and asphalt roofing manufacturing, 8 facilities; solvent extraction for vegetable oil processing, 89 facilities; boat manufacturing, 93 facilities; reinforced plastics composite production, 448 facilities.	The rules took effect on the date of adoption.

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AIR			
NEW YORK STATE **Fuel Composition and Use—Waste Oil as a Fuel** 6 NYCRR Subpart 225-2	DEC **replaced its existing rule governing the burning of waste oil for energy recovery with a new rule** that updates key definitions and constituent requirements, removes outdated work practices, expands the number of facilities eligible to burn waste oil onsite, updates the monitoring, reporting, and recordkeeping requirements, and makes other updates/corrections. The replacement rule, set forth at 6 NYCRR Subpart 225-2, includes the following provisions: • ***Definitions.*** DEC revised the definition of "waste oil" in 6 NYCRR Part 200 to clarify that it may not contain chemical waste. Consistent with this change, DEC dropped the distinction between Waste A and Waste B fuels. As a result of this change, facilities that burn used oil containing chemical waste and off-spec waste oils that do not meet the requirements of Subpart 225-2 will be regulated under 6 NYCRR Part 212 (process operations) or the hazardous waste regulations. DEC also relocated the definition of residual oil to Part 200. • ***Constituent limits.*** Waste oil must meet specific constituent limits in order to be burned under Subpart 225-2. With this rulemaking, DEC lowered the limits for PCBs and lead, removed a 99% combustion efficiency requirement, added limitations for arsenic, cadmium and chromium, and left the limit for total halogens unchanged. The sulfur standard is set forth in 6 NYCRR Subpart 225-1. • ***Applicability.*** The regulation authorizes stationary combustion installations or process sources with a heat input of 20 million Btu per hour or more to burn waste oil provided they possess the required permit/registration and meet other requirements. • ***Space heaters.*** DEC expanded the permitting exemption for space heaters to cover "automotive maintenance/service facilities or marine service facilities" while lowering the size of the eligible exempt space heating equipment from 1 million to 500,000 Btus per hour. • ***Prohibitions.*** The rule prohibits the sale/use of waste oil or blends of waste/virgin oil for residential heating. It also prohibits all burning of waste oil in New York County (i.e., Manhattan). DEC also adopted new recordkeeping requirements. The final rule can be found on DEC's website at: www.dec.ny.gov/regulations/117857.html.	The rule is primarily of interest to facilities that burn waste oil in combustion, incineration and process sources, including automotive maintenance/service facilities and marine service facilities that burn their own waste oil in space heaters as well as to companies that supply waste oil for burning. The changes to the rule expand the number of facilities allowed to burn their own waste oil as fuel while shifting the regulation of facilities burning waste oil combined with chemical waste to 6 NYCRR Part 212. The rule also imposes stricter limits on the allowable constituents of the waste oil to be burned. DEC proposed revisions to 6 NYCRR Subpart 225-2 in 2016; however, this rulemaking was never finalized. Comments received on the 2016 proposal were taken into account in drafting the current rule.	The rule takes effect April 2, 2020.

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AIR			
NEW YORK STATE **Distributed Generation Sources Located in New York City, Long Island, Westchester and Rockland Counties** 6 NYCRR Part 222	Following a court challenge of its 2016 predecessor, DEC adopted a **new rule for distributed generation (DG) sources—stationary reciprocating or rotary internal combustion engines that feed into the distribution grid, produce electricity for use at host facilities** or both. The replacement rule, which is set forth at 6 NYCRR Part 222, applies to owners/operators of DG sources with maximum mechanical output ratings of 200 horsepower or greater (hp) that: (1) are classified as economic dispatch sources; (2) are located in the New York City metropolitan area; and (3) have the potential to emit less than 25 tons per year (tpy) of nitrogen oxide (NOx) (i.e., are minor facilities). Economic dispatch sources are DG sources that provide electricity for general use to a building, structure or collection of structures in place of electricity supplied by utilities; the term does not include emergency generators. Key requirements include: • ***Definitions.*** The regulation includes numerous new defined terms, including demand response program, demand response source, demand response event, distribution utility, distributed generation source, economic dispatch source, and price-responsive generation source, among many others. • ***Notification.*** Owners/operators of DG sources must obtain a registration/permit prior to operating as an economic dispatch source. If already covered by a registration or permit, the owner/operator must notify DEC in writing by March 15, 2021 or 30 days prior to operating the source as economic dispatch source, whichever is later. • ***Control requirements.*** Effective May 1, 2021, owners/operators of economic dispatch sources that are combustion turbines firing natural gas or oil, compression ignition engines, or lean-burn engines must be of model year 2000 or newer or have a NOx emission rate of no more than 2.96 pounds per megawatt-hour as certified in writing by a professional engineer while rich burn engines must be equipped with three-way catalyst emission controls. Effective May 1, 2025, owners/operators of economic dispatch sources must comply with stricter category-specific NOx emission limits. Compliance with these limits must be demonstrated via emission testing in accordance with the regulations. DEC also adopted new recordkeeping requirements. The regulation can be found on DEC's website at: www.dec.ny.gov/regulations/117975.html.	The rule is primarily of interest to owners/operators of economic dispatch sources in the New York City metropolitan area that are not located at major NOx sources (and thus are not regulated under 6 NYCRR Part 227-2) and meet the specified size criteria (200 hp or greater). Economic dispatch sources that meet these criteria are subject to the emission limits, testing and other requirements. DEC estimates that there are more than 160 facilities enrolled in demand response programs that may be subject to the new rule. Participants include industrial, commercial and institutional facilities. According to DEC, the emission standards are necessary to help the downstate area meet the 2008 ozone national ambient air quality standard. Economic dispatch sources that participate in demand response programs typically are called upon to operate on high electricity demand days in the summer when ozone levels are highest, making the imposition of emission limits necessary.	The rule took effect March 25, 2020. Following the public comment period, DEC revised the draft regulations to, among other things: establish procedures for currently unpermitted facilities that decide after the notification date to operate DG sources as economic dispatch sources; extend the notification date from March 15, 2020 to March 15, 2021; extend the initial compliance date from May 1, 2020 to May 1, 2021; and allow up to a two-year extension from the May 1, 2025 final compliance date provided the applicant can provide evidence that it intends to meet the applicable emission limit as expeditiously as possible but not later than April 30, 2027.

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AIR			
NEW YORK STATE **Incinerator Standards, including Requirements for Crematories and Nitrogen Oxide (NOx) Standards for Municipal Solid Waste (MSW) Incinerators** 6 NYCRR Part 219	DEC **revised its incinerator standards**, including updating its standards for crematories and adding a new subpart to limit NOx emissions from MSW combustion units. With respect to **crematories**, DEC repealed and replaced 6 NYCRR Subpart 219-4, Incinerators, Crematories, while sunsetting Subparts 219-5 and 219-6, a change that requires existing units regulated under these subparts to comply with more stringent standards. Key revisions include: • ***Emission and temperature limits.*** New crematories will be required to meet a particulate matter (PM) emission limit of 0.05 grains per dry standard cubic foot of exhaust gas (gr/dscf) while existing units must meet a limit of 0.08 gr/dscf, which is lower than the current PM limit. DEC also eliminated the temperature limit in the first chamber of the crematorium and lowered the limit in the second chamber from 1800° F to 1600° F after concluding that the first chamber cannot safely be loaded under the current rule and that the existing limit in the second chamber results in excess emissions. • ***Prohibited materials.*** The rule limits materials that can be burned in a crematorium to human/animal remains, the container, and small amounts of animal bedding. Because state law prohibits operators from opening the container holding the remains, the rule requires the funeral director or other authorized person to certify that there are no prohibited materials present with the remains. • ***Performance testing.*** Crematory operators can demonstrate compliance with the PM emission limit by conducting their own performance test or providing representative stack test results of identical units from the manufacturer. • ***Ambient air analysis.*** DEC eliminated a requirement that all crematories provide an ambient air impact analysis. Instead, such analyses are required only if requested by DEC. • ***Operator training.*** All crematory operators must be trained and certified. • ***Recordkeeping.*** The rule contains detailed recordkeeping requirements. As part of the same rulemaking, DEC adopted new Subpart 219-10, which imposes 24-hour and annual NOx emission limits for **MSW incinerators** that differ based on the type of incinerator, together with performance testing, continuous emission monitoring, and other requirements. As part of the rulemaking, DEC also revised certain definitions in 6 NYCRR Part 200. The rule can be found on DEC's website at: www.dec.ny.gov/regulations/118193.html.	The revisions will primarily affect owners and operators of crematories and MSW incinerators. With respect to crematories, DEC conducted emission tests of crematories manufactured by several different companies and concluded that they are capable of meeting more stringent PM emissions limits than currently required by Subpart 219-4. DEC also concluded that most existing crematories were reaching the end of their useful lives and that requiring stricter limits would not pose a financial burden since the units would need to be replaced regardless. Existing facilities have five years from the date of adoption to meet the new emission limits. Existing MSW incinerators are expected to incur costs to comply with the new NOx emission limits. Facilities that cannot meet the limits can seek a facility-specific reasonably available control technology (RACT) determination.	The rules took effect March 14, 2020. In response to public comment, DEC revised the proposed MSW NOx regulation to: allow the use of continuous emission monitoring system (CEMS) data rather than performance test data to demonstrate compliance at MSW incinerators already equipped with CEMS; specify that emission limits do not need to be met during periods of startup, shutdown and malfunction; extend the compliance date from January 1, 2020 to June 30, 2021; specify that the compliance demonstration date will be one year after issuance of Title V permit modification needed to incorporate proposed requirements; and clarify that the annual NOx average will be calculated on a 365-day rolling average basis.

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HAZARDOUS WASTE			
NEW YORK STATE **Updated Hazardous Waste Regulations** 6 NYCRR Parts 370-374 and 376	DEC revised **New York's hazardous waste regulations to incorporate changes** to the federal regulations adopted from September 30, 1999 through April 8, 2015 and make certain conforming changes through November 28, 2016. Key revisions include: • Excluding mineral processing characteristic spent materials being reclaimed from regulation as solid waste, allowing management of manufacturing gas plant waste that exceeds the toxicity limits for benzene as non-hazardous provided conditions are met, and deleting five waste streams from the list of K wastes because they are no longer generated or are managed so as not to require listing. • Updating the requirements for zinc fertilizers made from recycled hazardous secondary materials. • Amending various testing and monitoring requirements. • Adding mercury-containing equipment to the list of universal wastes. Note: DEC already is implementing this rule pursuant to a Commissioner policy. • Adopting parts of a burden reduction initiative aimed at eliminating certain recordkeeping and reporting requirements. Note: New York's regulations will remain more stringent in some respects. • Adopting alternative requirements for hazardous waste determination and accumulation at academic laboratories that, among other things, allow waste determinations to be made in the lab, at an onsite central accumulation area, or onsite treatment, storage and disposal facility. • Adopting streamlined requirements for cathode ray tubes. Note: DEC is already implementing this rule pursuant to a Commissioner's Policy. DEC also made "state-initiated corrections" that include: • Clarifying the definition of "small quantity generator" and conforming to EPA's revised definition published on November 28, 2016. • Requiring facilities to prepare and retain so-called "c7" recycling notifications for dental amalgam, precious metals, used lead acid batteries, and used electronics, while eliminating the requirement that the notifications be submitted to DEC. • Clarifying that load consolidation must occur in secondary containment. Since regulated entities must comply with the federal hazardous waste regulations to the extent they are more stringent than their state counterparts, the revisions will eliminate some dual federal/state regulation. Also, the changes include federal rulemakings, such as those governing mercury-containing equipment and academic labs, that are intended to streamline the hazardous waste management process. Information about the revisions can be found on DEC's website at: www.dec.ny.gov/regulations/100424.html.	The rule affects hazardous waste generators and treatment, storage, and disposal facilities. As in the past, DEC is declining to adopt certain federal rules, resulting in state regulations that are stricter than their federal counterparts. As part of this rulemaking, DEC incorporated the NESHAP for hazardous waste combustors into the State's hazardous waste regulations. Currently, DEC also is seeking input on revising the state regulations to incorporate certain federal rules adopted since 2012, including: • Revising the definition of solid waste to conditionally exclude solvent-contaminated wipes. • Conditionally excluding carbon dioxide streams injected into underground injection wells for carbon sequestration purposes from the definition of hazardous waste. • Establishing the framework to implement electronic manifests. • Revising the exclusion from the definition of solid waste relating to hazardous secondary materials. DEC took no action on these rules. For the most part, DEC also did not address EPA's November 28, 2016 rule overhauling the hazardous waste generator requirements.	The final rule takes effect April 18, 2020 (60 days after filing). DEC made minor changes to the proposed regulations following the public comment period.

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ENFORCEMENT			
FEDERAL **COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program** March 26, 2020	EPA's Office of Enforcement and Compliance Assurance issued **guidance explaining how it intends to exercise its enforcement discretion during the COVID-19 pandemic**. The document, entitled *COVID-19 Implications for EPA's Enforcement and Compliance Assurance Program*, notes that entities are expected to make every effort to comply with their environmental compliance obligations; if compliance is not reasonably practicable, they must act responsibly to minimize noncompliance and document their efforts. Key provisions are: • ***Routine compliance monitoring and reporting.*** With respect compliance monitoring, integrity testing, sampling, laboratory analysis, and reporting/certification, entities should use existing procedures to report noncompliance to the extent practicable; otherwise, entities must maintain the information internally and make it available upon request. EPA does not intend to seek penalties for violations where it agrees that COVID-19 was the cause of the noncompliance and does not expect facilities to catch up with missed monitoring/reporting events involving intervals of less than three months. • ***Training.*** Although training/certification should be kept current to the extent practicable, EPA expressed a preference for keeping experienced, trained operators on the job, even if a training or certification is missed. • ***Settlement agreement and consent decree reporting obligations and milestones.*** If an entity anticipates missing an enforceable milestone in an administrative settlement agreement because of the COVID-19 crisis, parties should utilize the notice procedures in the agreement, including those relating to force majeure. Routine compliance monitoring will be handled as outlined above. For consent decrees (i.e., agreements entered with a court), EPA plans to coordinate with the U.S. Department of Justice to exercise enforcement discretion. • ***Facility operation.*** EPA expects regulated entitles to continue to manage and operate their facilities safely and contact the appropriate implementing authority if facility operations impacted by the COVID-19 pandemic may create an acute risk or imminent threat to human health or the environment. The guidance outlines the procedure for reaching out to state and tribal authorities as well as its approach for handling situations involving programs that EPA implements directly. Where the problems result in the failure of air/water pollution control systems, the entity is expected to notify the implementing authority and provide key information about the incident and its response. The guidance also clarifies that if COVID-19 interferes with a hazardous waste generator's ability to ship waste off-site, the entity will be treated as a generator and not as a treatment, storage and disposal facility. The guidance also addresses public water systems regulated under the Safe Drinking Water Act, critical infrastructure, State oversight, accidental releases, and criminal violations. The guidance can be found on EPA's website at: www.epa.gov/sites/production/files/2020-03/documents/oecamemooncovid19implications.pdf.	The policy affects all entities potentially subject to civil enforcement under key EPA programs. The policy does not apply to Superfund and RCRA corrective action enforcement instruments; EPA plans to issue a separate document addressing compliance with remedial orders. To date, DEC has not issued any formal guidance regarding environmental compliance in relation to the COVID-19 crisis. However, DEC staff are working directly with regulated entities to address COVID-19 concerns relating to their operations.	The policy took effect retroactively as of March 13, 2020.

Other Recent Developments (Final)

AIR

FEDERAL: EPA issued the results of its **residual risk/periodic technology review of the NESHAP for municipal solid waste (MSW) landfills**. The MSW landfill NESHAP, set forth at 40 CFR Part 63, subpart AAAA, regulates HAP emissions from MSW landfills that are either major or area sources provided certain criteria relating to waste acceptance, design capacity and emissions are met. Landfills subject to the standard must install and operate a landfill gas collection and control system as specified in the original New Source Performance Standard (NSPS) for MSW landfills. After reviewing the existing standard, EPA concluded under the residual risk provision of CAA § 112(f) that the risks remaining after application of the NESHAP were acceptable and that the standard protects public health with an ample margin of safety. In addition, EPA found under CAA § 112(d)(6) 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. While the NESHAP's numerical limits are unchanged, EPA made various other revisions, including: streamlining the MSW landfill NESHAP by incorporating requirements from the updated MSW landfill NSPS into the NESHAP; updating the operational standards for gas collection systems; clarifying the circumstances under which landfill owners/operators must implement corrective action as well as the corrective action process; updating the provisions relating to startup, shutdown and malfunction consistent with judicial rulings; and requiring electronic submission of required performance test results and other reports. The rule took effect March 26, 2020; it can be found in the Federal Register issued on that date at: www.govinfo.gov.

Implications: EPA estimates that as of 2014 there were between 664 and 709 MSW landfills subject to the collection and control requirements of the MSW landfill NESHAP.

FEDERAL: EPA allocated allowances for specific hydrochlorofluorocarbons (HCFCs) for the years 2020 through 2029 and otherwise **revised and updated requirements under the program for controlling production and consumption of ozone-depleting substances (ODS)**. Title VI of the CAA required EPA to establish a program to limit the production and consumption of ODS, including HCFCs, for purposes of preventing depletion of the stratospheric ozone layer. In accordance with its treaty obligations under the Montreal Protocol on Substances that Deplete the Ozone Layer, EPA adopted a program to gradually phase out production and consumption of HCFCs, beginning with those substances with the greatest ozone depletion potential. With the recent rulemaking, EPA allocated annual production and consumption allowances for HCFC-123 and HCFC-124 for the years 2020 through 2029 to be used for servicing certain equipment manufactured before 2020. In addition, EPA: added servicing of fire suppression equipment to the list of authorized uses of virgin HCFC-123 and HCFC-124 and revised certain labeling requirements consistent with this change; required certain documents to be submitted to EPA electronically through the agency's Central Data Exchange system; deleted outdated reporting and recordkeeping requirements; clarified certain provisions relating to the sale of quarantine and preshipment methyl bromide, a fumigant used to control pests in agriculture and shipping; and revised provisions relating to the import of ODS. Certain provisions took

effect March 17, 2020 while others are effective April 16, 2020. The rule can be found in the March 17, 2020 Federal Register at: www.govinfo.gov.

Implications: The rule is primarily of interest to the manufacturers, importers and users of the HCFCs and other ODS referenced in the rule.

NEW YORK STATE: DEC **prohibited the sale of federal aftermarket catalytic converters (AMCC)** and updated existing AMCC recordkeeping and reporting requirements for gasoline-powered automobiles, light-duty trucks and medium-duty passenger vehicles. New York State traditionally has implemented the stricter California vehicle emission standards in place of the federal requirements. With the recent rulemaking, DEC revised 6 NYCRR Subpart 218-7 to incorporate revisions to the standards for new California certified AMCCs. The regulation prohibits the sale of federal certified AMCCs for use on any vehicle in New York; legal replacement options are limited to California AMCCs or original equipment manufacturer parts unless a waiver is granted by DEC. The prohibition will take effect January 1, 2023 (rather than January 1, 2021 as originally proposed). The rule requires AMCC installers to verify that the equipment complies with the applicable standards and maintain certain records. AMCC manufacturers, distributors and retailers also must comply with recordkeeping requirements and, in the case of manufacturers, reporting requirements. The rule took effect March 14, 2020; it can be found on DEC's website at: www.dec.ny.gov/regulations/117852.html.

Implications: The rule is potentially of interest to owners of automobiles, light-duty trucks and medium-duty passenger vehicles regulated under 6 NYCRR Part 218, as well as AMCC manufacturers, installers and retailers.

CLIMATE CHANGE

FEDERAL: EPA revised its ozone depleting substance regulations to **limit the appliance maintenance and leak repair provisions to equipment containing an ODS**. Under Title VI of the CAA, EPA adopted detailed regulations governing the servicing, repair and disposal of appliances or industrial process refrigeration equipment containing ODS with the goal of protecting the earth's stratospheric ozone layer by limiting releases of ODS. EPA later expanded the regulations to cover certain ODS substitutes, including hydrofluorocarbons (HFCs), that also contribute significantly to climate change. In a challenge to a related rule, a federal court held that EPA did not have the authority to require manufacturers to replace HFCs with a substitute substance because HFCs are not ODS. With the recent rulemaking, EPA rescinded the portion of the 2016 rule extending the leak detection and repair requirements to non-exempt ODS substitutes such as HFCs. According to EPA, the 2016 rule was based on an incorrect interpretation of its authority under CAA § 608, 42 U.S.C.A. § 7671g. Applying this new interpretation, EPA rescinded the provisions extending the leak detection and repair requirements to appliances containing non-exempt ODS substitutes while continuing to apply other aspects of the rules relating to training/certification of technicians, refrigerant sales, equipment disposal, and refrigerant reclamation to appliances containing non-exempt substitute refrigerants. The final rule takes effect April 10, 2020; it can be found in the March 11, 2020 Federal Register at: www.govinfo.gov.

Implications: The final rule is primarily of interest to manufacturers and users of refrigerants, refrigeration and air conditioning equipment, and other equipment that contains certain non-ODS refrigerants.

GENERAL

FEDERAL: EPA adopted regulations outlining the **procedures for conducting on-site civil inspections** by EPA staff or contractors. The procedures, which are set forth at 40 CFR Part 31, were developed to fulfill the objectives outlined in Executive Order 13892, entitled *Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication* issued in October 2019. The rule codifies key elements of the civil inspection process, including: timing of inspections and facility notification; inspector qualifications; obtaining consent to enter (including prohibition against inspector signing facility release of liability, i.e., waiver, or statement limiting EPA's use of information); opening conference (including request for records and provision of Small Business Resources Information Sheet, where appropriate); physical inspection; managing confidential business information; interviews with facility personnel; records review; sampling; closing conference; and inspection report. The rule took effect March 2, 2020 and can be found in Federal Register issued on that date at: www.govinfo.gov.

Implications: The rule is potentially of interest to anyone regulated by EPA that may be subject to civil inspection.

Other Recent Developments (Proposed)

CHEMICAL

FEDERAL: EPA is seeking comments on the **results of its draft risk evaluation for trichloroethylene (TCE) under 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. As part of that process, EPA identified chemicals from existing lists for risk evaluation, including TCE. The draft TCE risk evaluation concluded that the environmental risks associated with TCE were not unreasonable. However, it went on to find an unreasonable risk from dermal and inhalation exposure for workers and consumers as well as unreasonable risks from inhalation exposure for certain occupational non-users and bystanders for consumer uses. The risk assessment includes a comprehensive list of conditions of use relating to manufacturing, processing, distribution, industrial/commercial uses, and consumer uses that present an unreasonable risk. TCE is a common ingredient in solvents, adhesives, lubricants, cleaning and other consumer and commercial/industrial products and is a reactant/intermediate in the manufacture of certain chemicals. If EPA finalizes the risk evaluation, it must develop rules regulating the use of products containing TCE. EPA is accepting comment on the draft risk assessment until **April 27, 2020**; it can be found at: www.epa.gov/tsca-cbi/draft-risk-evaluation-trichloroethylene.

Implications: The proposed risk evaluation is potentially of interest to individuals and facilities that manufacture/use products containing TCE.

WATER

FEDERAL: EPA is seeking comment on its **preliminary determination to adopt a national primary drinking water regulation (NPDWR) for perfluorooctanesulfonic acid (PFOS) and perfluorooctanoic acid (PFOA)** under the Safe Drinking Water Act (SDWA). EPA must publish a contaminant candidate list (CCL) every five years containing contaminants that are not subject to any existing NPDWRs, are known or anticipated to be in public water systems, and may require regulation under the SDWA. EPA published CCL 4 in 2016, accepting comment on whether to set standards for one or more of 109 possible drinking water contaminants. After reviewing the available information, EPA announced its preliminary decision to adopt NPDWRs for PFOA and PFOS. According to EPA, PFOA and PFOS meet all three criteria for SDWA regulatory determinations: they may have an adverse health effect; they occur with frequency and at levels of public health concern in public drinking water systems; and regulation of PFOA and PFOS in drinking water presents a meaningful opportunity for health risk reduction based on the estimated exposed population, potential impacts on sensitive populations, and estimated exposure from other sources. In the same notice, EPA summarized the results of each stage of its CCL review and announced its preliminary determination not to set standards for the remaining six contaminants evaluated in the final stage of the CCL 4 review—1,1-dichloroethane, acetochlor, methyl bromide (bromomethane), metolachlor, nitrobenzene and Royal Demolition eXplosive (RDX). EPA is accepting comments on its preliminary regulatory determination to set NPDWRs for PFOA and PFOS until **May 11, 2020**. The notice can be found in the March 10, 2020 Federal Register at: www.govinfo.gov.

Implications: The determination is primarily of interest to owners/operators of public drinking water systems.

GENERAL

FEDERAL: EPA is seeking comment on a supplement to its proposed **"Transparency in Regulatory Decisionmaking" regulation** that would require EPA to make the data underlying certain studies offered to support major rulemakings available in a manner that allows for independent validation. In 2018, EPA proposed new 40 CFR Part 30, which would provide a mechanism to increase access to so-called "pivotal regulatory science"—the studies, models and analyses that drive the magnitude of the benefit-cost calculation. In making the data or models publicly available, EPA must protect privacy, confidentiality, and confidential business information and be sensitive to national and homeland security concerns. According to EPA, the rule will "enhance[e] the public's ability to understand and meaningfully participate in the regulatory process," by providing the information that will allow scientists to review and validate key models/data underlying significant rulemakings. With the recent supplemental notice of proposed rulemaking, EPA is seeking comment on additions to certain provisions of the proposed rule, including: expanding the scope of the rule to apply to influential scientific information as well as significant regulatory decisions; adding definitions of key terms; clarifying that the proposed rulemaking applies to data and models underlying both pivotal science and pivotal regulatory science; and changing the public availability provisions for data and models. EPA is accepting comment on the supplemental notice until **April 17, 2020**; it can be found in the March 18, 2020 Federal Register at: www.govinfo.gov.

Implications: The regulation may reduce the number studies available and thus limit EPA's ability to regulate because it lacks the information necessary to make key regulatory decisions.

NEW YORK STATE: DEC is accepting comments on **Program Policy OGC-2, *Procedure for Handing Small Claims*** filed against DEC. The policy covers two types of small claims: (1) claims filed by the public against DEC not exceeding $5,000 for personal injuries or property damage resulting from the tortious conduct of DEC or its employees pursuant to State Finance Law § 8 (12-a); and (2) claims submitted by Department employees not exceeding $350 for personal property damaged or destroyed in performance of official duties without the fault or negligence of the employee pursuant to applicable union contracts and State Finance Law § 8. For each type of claim, the draft Program Policy identifies the information that must be provided and the forms that must be completed to file a claim and the standards/procedures for reviewing and approving/denying claims. The draft policy will replace a policy issued in 1997. DEC is accepting comments on the draft policy until **April 16, 2020**; a copy of the draft policy can be obtain from Drew Wellette at drew.wellette@dec.ny.gov.

Implications: The draft policy is potentially of interest to DEC employees and to individuals using DEC facilities or interacting with DEC employees.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

April 10, 2020: Public hearings on the following regulations scheduled for 11:00 a.m. at DEC's Central Office, 625 Broadway, Room 129A/B in Albany: (1) proposed revisions to ultra low sulfur diesel fuel and BART for heavy duty vehicles owned/operated by or on behalf of a State agency; and (2) sulfur-in-fuel limitations. NOTE: Public hearing has been CANCELLED due to the COVID-19 virus.

April 14, 2020: Public hearings on the following regulations scheduled for 11:00 a.m. at DEC's Central Office, 625 Broadway, Room 129A/B in Albany: (1) repeal and replacement of standards for gasoline dispensing facilities and transport vehicles; (2) revisions to NSR regulations; and (3) new and revised VOC content limits for consumer products. Public hearing has been CANCELLED due to the COVID-19 virus.

April 16, 2020: Deadline for submitting comments on DEC's proposed revisions to Program Policy OGC-2, *Procedure for Handling Small Claims,* which can be obtained by contacting Drew Wellette at drew.wellette@dec.ny.gov.

April 17, 2020: Deadline for submitting comments on EPA's proposed changes to the CCR landfill/surface impoundment closure requirements. See the March 3, 2020 Federal Register at www.govinfo.gov for details.

April 17, 2020: Deadline for submitting comments on EPA's proposed changes to its proposed Transparency in Regulatory Decisionmaking rule to strengthen transparency in regulatory science. See the March 18, 2020 Federal Register at www.govinfo.gov for details.

April 17, 2020: Deadline for submitting applications for DEC's Annual Environmental Excellence Awards. The application and related materials can be found on DEC's website at www.dec.ny.gov/public/945.html.

April 20, 2020: Deadline for submitting comments EPA's proposed federal permit program for the regulation of CCR in nonparticipating states and Indian country. See the February 20, 2020 Federal Register at www.govinfo.gov for details.

April 21, 2020: Deadline for submitting comments on EPA's proposal not to impose financial responsibility requirements under CERCLA § 108(b) for facilities in the chemical manufacturing industry. See the February 21, 2020 Federal Register at www.govinfo.gov for details.

April 27, 2020: Deadline for submitting comments on EPA's draft Risk Evaluation for Trichloroethylene under TSCA. See EPA's website at www.epa.gov/tsca-cbi/draft-risk-evaluation-trichloroethylene for details.

April 28, 2020: Deadline for submitting comments on the proposed extension of Phase 2 of the NPDES electronic reporting rule. See the February 28, 2020 Federal Register at www.govinfo.gov for details.

May 11, 2020: Deadline for submitting comments on EPA's preliminary determination to establish drinking water standards for PFOA and PFOS under the SDWA. See the March 10, 2020 Federal Register at www.govinfo.gov for details.

May 15, 2020: Deadline for submitting comments on the following DEC rulemakings: (1) proposed revisions to ultra low sulfur diesel fuel and BART for heavy duty vehicles owned/operated by or on behalf of a State agency; and (2) sulfur-in-fuel limitations (extended from April 15, 2020). See DEC's website at www.dec.ny.gov/regulations/propregulations.html#public for details.

May 21, 2020: Deadline for submitting comments on the following DEC rulemakings: (1) repeal and replacement of standards for gasoline dispensing facilities and transport vehicles; (2) revisions to NSR regulations; and (3) new and revised VOC content limits for consumer products (extended from April 21, 2020). See DEC's website at www.dec.ny.gov/regulations/propregulations.html#public for details.