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ENVIRONMENTAL BREAKFAST CLUB REGULATORY SUMMARY

December 9, 2020

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Final Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
<p>AIR</p> <p>FEDERAL Reclassification of Major Sources as Area Sources under National Emission Standards for Hazardous Air Pollutants Program 40 CFR Part 63 85 Fed. Reg. 73854 (Nov. 19, 2020)</p>	<p>EPA amended the general provisions of the National Emission Standards for Hazardous Air Pollutants (NESHAP) regulation to implement its previous repeal of the “once in, always in” (OIAI) policy. Clean Air Act (CAA) § 112 establishes emission standards applicable to major and area sources of hazardous air pollutants (HAPs) in specific source categories. The major source standards apply to sources with the potential to emit (PTE) at least 10 tons per year (tpy) of any single HAP or 25 tpy of any combination of HAPs. In 1995, EPA issued guidance declaring that sources could switch to area source status by capping emissions only until the first compliance date of the standard. Thereafter, sources were required to comply permanently with the applicable major source standard regardless of their emissions. Although EPA proposed to rescind the OIAI policy in 2007, the change was never finalized. In 2018, EPA issued guidance declaring that the OIAI policy violates the plain language of the CAA, pointing to the statutory definitions of “major source” and “area source,” which purportedly make clear that any major source that accepts permit conditions limiting its potential emissions below the major source thresholds is, by definition, an area source and no longer subject to major source standards under the NESHAP program. With the recent rulemaking, EPA revised the general NESHAP regulations to formalize the new policy. Key changes include:</p> <ul style="list-style-type: none"> • Adding a new paragraph specifying that a major source can become an area source at any time by limiting its HAP PTE below the major source thresholds. • Revising the definition of PTE to remove the requirement that limits must be federally enforceable to address a court decision remanding the definition of PTE back to EPA for clarification on the issue. • Specifying compliance timeframes for sources that reclassify from major to area source status and those that revert back. • Requiring owners/operators to notify EPA whenever the source switches from major to area source or reverts from area source back to major. <p>EPA postponed a decision on whether to further clarify the definition of PTE.</p> <p>The rule can be found in the November 19, 2020 Federal Register at: www.govinfo.gov.</p>	<p>The elimination of the OIAI policy is potentially of interest to any facility currently subject to a major source NESHAP. The 2018 memorandum allowed facilities to accept permit conditions that would reduce their potential HAP emissions below the 10 tpy/25 tpy major source thresholds and thus avoid regulation under applicable major source NESHAPs. The recent revisions codify the policy into law. EPA previously estimated that approximately half of the sources currently subject to a major source NESHAP could potentially become area sources.</p> <p>Critics of the change argue that it will allow sources to evade the strict emission controls imposed on major sources, leading to increased pollution.</p>	<p>The rule takes effect January 19, 2021.</p>

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<p>AIR</p> <p>FEDERAL Prevention of Significant Deterioration and Nonattainment New Source Review Project Emissions Accounting 40 CFR Parts 51 and 52 85 Fed. Reg. 74890 (Nov. 24, 2020)</p>	<p>EPA revised the rules governing how emission decreases are addressed when determining whether a project triggers new source review (NSR). Under the nonattainment NSR and prevention of significant deterioration (PSD) programs (collectively, NSR), modifications at major facilities are considered significant for NSR purposes if increased emissions exceed specified thresholds. This review requires two steps. First, the applicant must determine if the project itself exceeds the significant emission increase threshold. If yes, the applicant must then conduct an emissions “netting” analysis to determine whether cumulative emission increases and decreases during the previous five years exceed the threshold. In the past, emission decreases associated with the project were not considered until Step 2, i.e., as part of the netting process. In March 2018, EPA issued a memorandum announcing that it had reinterpreted the regulations and concluded that emission decreases associated with the project under review should be considered during Step 1 of the NSR process. With the recent rulemaking, EPA revised the PSD and nonattainment NSR regulations to clarify implementation of the “project emissions accounting” process. In particular, EPA revised the regulations to clarify that project emissions accounting (consideration of both project increases and decreases during Step 1 of the process) is allowed for projects that involve a mixture of both new and modified units. In addition, EPA concluded that the existing regulations requiring recordkeeping when a modification presents a “reasonable possibility” of a significant emission increase are sufficient to document the changes covered by the regulation. Finally, EPA decided to give states discretion whether to incorporate the recent changes into their NSR programs.</p> <p>The rule can be found in the November 24, 2020 Federal Register at: www.govinfo.gov.</p>	<p>The revisions are potentially of interest to major air emissions sources that could trigger NSR if modified. By allowing facilities to consider project-related decreases during Step 1, EPA anticipates that more projects at major facilities will be able to avoid NSR during Step 1 under the federal NSR program.</p>	<p>The rule takes effect December 24, 2020.</p> <p>DEC has adopted its own regulations implementing NSR. These regulations, which are set forth at 6 NYCRR Part 231, explicitly declare that when calculating “project emission potential,” the facility “must consider only the proposed emission increases.” 6 NYCRR § 231-4.1(b)(40). Accordingly, DEC must revise its regulation to implement EPA’s project emission accounting rule, which is unlikely.</p>

Citation	Summary	Implications	Schedule/Notes
REMEDICATION			
<p>FEDERAL Financial Responsibility Requirements under CERCLA § 108(b) for Facilities in the Electric Generation, Transmission and Distribution Industry, Petroleum and Coal Products Manufacturing Industry, and Chemical Manufacturing Industry 40 CFR Part 320 85 Fed. Reg. 77384 (Dec. 2, 2020)</p>	<p>EPA decided not to impose financial responsibility requirements for facilities in the following industries under Section 108(b) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA): electric generation, transmission and distribution; petroleum and coal products manufacturing; and chemical manufacturing. 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 determined that financial assurance under CERCLA § 108(b) is not necessary for the electric power generation, transmission and distribution, petroleum and coal products manufacturing, and chemical manufacturing industries. According to EPA, facilities in these industries are already subject to extensive environmental regulation; past cleanups were driven largely by problems that are now less of a concern; and the industries have implemented voluntary practices that reduce potential contamination. In light of these developments, EPA concluded that the degree and duration of risk posed by these industries does not warrant imposition of financial responsibility requirements under CERCLA § 108(b).</p> <p>The findings can be found in the December 2, 2020 Federal Register at: www.govinfo.gov.</p>	<p>The findings are of greatest interest to owners/operators of facilities in the listed categories. Based on the determination, EPA will not require sources in the industries to provide financial assurance under CERCLA 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. The finding also does not affect EPA’s ability to impose financial responsibility obligations under other programs.</p>	<p>The final action takes effect January 4, 2021.</p>

Proposed Statutes, Regulations and Guidance

Citation	Summary	Implications	Schedule/Notes
CHEMICAL			
<p>FEDERAL Supplemental Analysis to the Draft Toxic Substances Control Act Risk Evaluation for 1,4-Dioxane 85 Fed. Reg. 74341 (Nov. 20, 2020)</p> <p>Final Risk Evaluation for Trichloroethylene 85 Fed. Reg. 75010 (Nov. 24, 2020)</p>	<p>EPA issued a pair of notices relating to risk evaluations under the Toxic Substances Control Act (TSCA) required to determine whether chemicals pose health or environmental risks during the normal course of use that must be mitigated. While the original TSCA statute focused on assessing chemicals before they enter the marketplace, the 2016 reforms require EPA to systematically assess existing chemicals. EPA must identify and prioritize chemicals for evaluation and conduct risk evaluations of high priority chemicals to determine if they present an unreasonable risk of injury to health or the environment under the conditions of use, including an unreasonable risk to a potentially exposed or susceptible subpopulation. As part of this effort, EPA identified 10 chemicals for risk evaluation outside the 2016 TSCA prioritization process, including 1,4-dioxane and trichloroethylene (TCE).</p> <p>1,4-dioxane is used primarily as a solvent in commercial and industrial applications. In addition, it appears as a by-product in consumer products and as a contaminant in surface water. After evaluating the risks associated with 1-4-dioxane as an ingredient, EPA conducted a supplemental analysis of the risks associated with the chemical as a by-product in consumer products as well as the risks to the general population from environmental exposures. With respect to the former, EPA identified eight conditions of consumer use that do not present an unreasonable risk to either the consumer or bystanders. With respect to the latter, EPA concluded that the general risk to the population from exposures to ambient air, drinking water, and sediment pathways were addressed under other programs and that analysis under TSCA would be duplicative.</p> <p>With respect to TCE, EPA issued a final risk assessment that identified 52 conditions of use that present an unreasonable risk, including unreasonable risks to workers, occupational non-users, and consumers/bystanders during chemical manufacturing, processing, repackaging and recycling; cleaning and degreasing; commercial use in adhesives, sealants, paints and other products; and disposal. TCE is primarily used as an ingredient in the manufacture of the hydrofluorocarbon HFC-134a and as a degreasing solvent.</p> <p>Notices concerning the risk assessments can be found in the November 20, 2020 and November 24, 2020 Federal Registers at: www.govinfo.gov.</p>	<p>The risk evaluations are potentially of interest to companies that manufacture, import, or process 1,4-dioxane and TCE as well as those generally interested in addressing the health risks of exposure to 1,4-dioxane. Upon determining that a substance poses an unreasonable risk to health, EPA has one year to propose and take comment on a program to address those risks through risk management measures that may include regulations to prohibit or limit the manufacture, processing, distribution in the marketplace, use, or disposal of the substance, as appropriate. It must finalize that program within one year of proposal.</p>	<p>EPA is accepting comment on the draft supplemental 1,4-dioxane risk evaluation until December 10, 2020.</p> <p>EPA plans to complete risk evaluations by the end of 2020 for each of the 10 chemicals identified for review outside the formal TSCA risk evaluation prioritization process.</p>

Other Recent Developments (Final)

AIR

FEDERAL: EPA adopted a rule **updating and streamlining many of its existing gasoline, diesel and other fuel quality regulations to improve overall compliance assurance**. The fuel standards, which were previously located primarily in 40 CFR Part 80, have been revised/updated on numerous occasions as the standards have evolved. With this rulemaking, EPA streamlined and modernized the regulation with the goal of eliminating expired provisions and consolidating the many different and overlapping regulations into a new rule at 40 CFR Part 1090. Fuel programs covered by the rule include, but are not limited to those addressing reformulated gasoline, anti-dumping, diesel sulfur, gasoline benzene, gasoline sulfur, E15 misfueling mitigation, and fuel detergents. Specific changes include: translating the summer RFG volatile organic compound standard into a Reid vapor pressure standard and thus simplifying compliance by allowing removal of special summer sampling testing and reporting requirements; consolidating the regulatory requirements across the Part 80 fuel quality programs into Part 1090; and updating and improving third-party oversight programs, including consolidating the four existing in-use survey programs into a single national survey. According to EPA, the action does not generally change the stringency of the existing fuel quality standards, although certain revisions may “slightly, indirectly affect in-use fuel quality.” With minor exceptions, this action does not affect the renewable fuel standards program, which will remain in 40 CFR Part 80, subpart M. The final rule—which generally takes effect January 1, 2021—can be found in the December 4, 2020 Federal Register at: www.govinfo.gov.

Implications: The rule is primarily of interest to producers, importers, blenders and sellers of petroleum and related products.

NEW YORK STATE: DEC **revised its annual air emission statement regulations to require electronic submission** and make other minor changes. The regulations—set forth at 6 NYCRR Subpart 202-2—require major air emission sources to submit reports annually quantifying their actual emissions of specified pollutants for the previous year. Beginning in 2011, sources were given the option of reporting electronically through DEC’s Air Compliance and Emissions Electronic Reporting Tool; in 2019, approximately 62% of facilities submitted their reports electronically. The new electronic reporting requirement applies to facilities issued new or renewed Title V permits on or after January 1, 2021. Under the schedule, a facility issued a new or renewed permit during calendar year 2021 must submit its report electronically in 2022 and so forth through 2026 (for calendar year 2025 emissions), at which point all facilities must submit their reports electronically with certain limited exceptions. Previously, all annual reports were due April 15th for the previous year’s emissions. With the recent rulemaking, DEC staggered annual emission statement due dates from March 15th through April 30th based on the number of processes at the facility. Finally, DEC revised the rule to provide facilities with the option of reporting only fuel throughput for combustion processes rather than calculating emissions associated with those processes. The rule, which took effect December 3, 2020, can be found on DEC’s website at: dec.ny.gov/regulations/120056.html.

Implications: The rule is primarily of interest to Title V air emission sources required to submit annual air emission statements under Subpart 202-2.

HAZARDOUS/SOLID WASTE

FEDERAL: EPA established new provisions for obtaining approval of alternate liners for existing coal combustion residual (CCR) surface impoundments under the federal program **regulating disposal of coal combustion residuals (CCR)**. In 2015, EPA published a rule regulating the disposal of CCR (i.e., coal ash) from utilities as solid waste in the wake of the catastrophic failure of several coal ash impoundments as well as more general concerns about environmental contamination relating to CCR storage and disposal in surface impoundments and landfills. Key elements of the rule address structural integrity, groundwater protection, operating criteria, recordkeeping, and inactive units/closure issues. In response to a court decision invalidating portions of the regulation, EPA revised the procedures under the CCR rule for facilities to request approval to use an alternate liner for existing CCR surface impoundments. The final rule, which takes effect on December 14, 2020, can be found in the November 12, 2020 Federal Register at: www.govinfo.gov.

Implications: The rule is primarily of interest to owners/operators of facilities engaged in CCR disposal.

WATER

FEDERAL: EPA issued an **interim strategy for addressing per- and polyfluoroalkyl substances (PFAS) in National Pollutant Discharge Elimination System (NPDES) permits issued by EPA** based on recommendations from a cross-agency workgroup. Among other things, the strategy advises EPA permit writers to consider including PFAS monitoring at facilities where these chemicals are expected to be present in point source wastewater discharges, municipal separate storm sewer systems (MS4s), and stormwater. The PFAS that can be considered for monitoring are those that have validated EPA analytical methods for wastewater testing, which are being finalized by the agency in phases. The strategy also encourages the use of best management practices where appropriate to control or abate the discharge of PFAS from both direct and indirect dischargers. In addition, EPA recommends information sharing on PFAS permitting practices, including development of a permitting compendium containing examples of different PFAS-related permitting approaches and the sharing of PFAS information in EPA's existing NPDES Permit Writers' Clearinghouse. The interim strategy can be found on EPA's website at: www.epa.gov/sites/production/files/2020-11/documents/pfas_npdes_interim_strategy_november_2020_signed.pdf.

Implications: The interim strategy applies to the three states for which EPA is the NPDES permitting authority (Massachusetts, New Hampshire and New Mexico), most U.S. territories, Indian Country, and certain federal facilities. In addition, it provides insight to delegated states such as New York on EPA's approach to regulating PFAS under its wastewater discharge program.

OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: The Occupational Safety and Health Administration (OSHA) issued a document identifying the **OSHA standards that have been cited most frequently during COVID-19-related inspections** conducted following complaints, referrals or fatalities in

industries such as hospitals and healthcare, nursing homes, long-term care settings, and meat/poultry processing. The standards cited most frequently involve respiratory protection and relate to medical evaluation, fit testing, implementation of a respiratory protection program, and training, among other respiratory protection requirements. In addition, employers have been cited for noncompliance with OSHA's recording and recordkeeping requirements for occupational injuries and illnesses, violations of personal protective equipment requirements, and violation of the general duty clause, which requires employers to provide a workplace that is free from recognized hazards that are causing or likely to cause death or serious physical harm to employees. The document, entitled *Common COVID-19 Citations: Helping Employers Better Protect Workers and Comply with OSHA Regulations*, can be found at: www.osha.gov/SLTC/covid-19/covid-citations-guidance.pdf.

Implications: The document is generally of interest to employers regulated under OSHA.

OTHER

FEDERAL: The Pipeline and Hazardous Materials Safety Administration (PHMSA) **revised the hazardous material transportation regulations in response to petitions for rulemaking submitted by the regulated community**. The changes are purportedly intended to reduce regulatory burdens while maintaining or enhancing the existing level of transportation safety. A partial list of changes includes: prohibiting the use of rail tank cars with shells or heads constructed of non-normalized steel for transportation of poisonous by inhalation (PIH) materials; harmonizing the existing regulations with the UN Model Regulations by allowing shipment of limited quantities of hydrogen peroxide in accordance with certain packaging exceptions; revising provisions relating to the size of markings on portable tanks with a capacity of 1,000 gallons or less; revising the regulations governing reconditioned metal drums to require that labels be "substantially" removed rather than removed; extending the limited quantity exception to additional hazardous materials consistent with the UN Model Regulations to simplify import of certain chemicals; continuing to allow the use of portable and mobile refrigerator systems commonly used in the produce industry that were placed into service before 1991 and meet a specific service pressure specification; phasing out the use of non-HM-246 rail cars for transporting PIH materials; and allowing use of the lab pack exception under the Resource Conservation and Recovery Act (RCRA) to ship non-RCRA waste. The rule, which takes effect December 28, 2020, can be found in the November 25, 2020 Federal Register at: www.govinfo.gov.

Implications: The rule is potentially of interest to companies that ship materials regulated under the PHMSA's hazardous material transportation program.

Other Recent Developments (Proposed)

WATER

FEDERAL/NEW YORK STATE: DEC is requesting comment on a **Section 401 water quality certification (WQC) in conjunction with nationwide permits (NWP) recently proposed to be reissued by the U.S Army Corps of Engineers (ACOE)**. Individuals

planning to undertake activities that will disturb wetlands or waterways frequently must obtain a permit from the ACOE. To streamline the permit approval process, the ACOE has issued NWP for project categories that typically result in minimal disturbances. In conjunction with the five-year review of the NWPs, states must review each NWP to determine whether regional conditions are necessary to ensure water quality. With the recent notice, DEC is seeking comments on whether its previous WQC letter issued in 2017 should be modified in light of proposed changes/additions to the NWPs. The 2017 letter divided the NWPs into four categories: (1) NWPs requiring no WQC because they are authorized only under Section 10 of the Rivers and Harbors Appropriation Act of 1899; (2) NWPs granted a blanket WQC provided the project meets certain State-specific general conditions relating to non-contamination of waters, installation and replacement of culverts, and discharges and disturbances, among many other conditions; (3) NWPs granted a blanket WQC provided the project meets the general conditions under item 2 above as well as conditions specific to the particular NWP; and (4) NWPs that have been denied blanket WQC and therefore require an individual certification. DEC is accepting comment on the Section 401 WQC letter until **December 10, 2020**; it can be found on DEC's website at: www.dec.ny.gov/docs/permits_ej_operations_pdf/wqcnwp2017.pdf.

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

GENERAL

NEW YORK STATE: DEC and the New York State Office of General Services (OGS) are accepting comment on four **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 four new specifications covering apparel, garment cleaning, laundry detergent, and coating removal products. OGS is accepting comments on the draft specifications until **March 19, 2021**. 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: ogs.ny.gov/greenny/executive-order-4-tentatively-approved-specifications.

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.

December 10, 2020: Deadline for submitting comments on EPA's supplemental TSCA risk evaluation for 1,4-dioxane. See the November 20, 2020 Federal Register at www.govinfo.gov for details.

December 10, 2020: Deadline for submitting comments on DEC's Section 401 WQC letter in conjunction with proposed reissuance of nationwide permits by the ACOE. The letter can be found on DEC's website at www.dec.ny.gov/docs/permits_ej_operations_pdf/wqcnwp2017.pdf

December 14, 2020: Deadline for submitting comments on proposed CSAPR update for the 2008 ozone NAAQS. See the October 30, 2020 Federal Register at www.govinfo.gov for details.

December 14, 2020: Deadline for submitting comments on the EPA's ANPR seeking input on alternatives for regulating legacy CCR surface impoundments. See the October 14, 2020 Federal Register at www.govinfo.gov for details.

December 19, 2020: Deadline for submitting comments on EPA's revised TSCA risk evaluation of C.I. Pigment Violet 29 (extended from November 30, 2020). See the October 30, 2020 Federal Register at www.govinfo.gov for details.

March 19, 2021: Deadline for submitting comments on DEC/OGS's draft specifications for procurement of green products by the State government. See the OGS website at ogs.ny.gov/greenny/executive-order-4-tentatively-approved-specifications for details.