ENVIRONMENTAL BREAKFAST CLUB
REGULATORY SUMMARY

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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			
NEW YORK STATE **Air Permit Rule Revisions** 6 NYCRR Parts 200, 201, 212 and 621	DEC revised its air permitting regulations, set forth at 6 NYCRR Part 201 and related provisions, to **improve the clarity and consistency of its air permit program**. Key changes include: • Adding a new section addressing research and development activities that expands the criteria for deciding whether these activities are exempt from permitting, establishes recordkeeping requirements, and specifies that a registration or permit may be required if the criteria cannot be met. • Revising key definitions, including emergency, laboratory operations, malfunction, portable emission source, and temporary emission source. • Revising exempt/trivial activities, including: reducing the threshold for exempt asphalt storage tanks from 300,000 barrels to 10,000 gallons; adding an exemption for biodiesel tanks with a capacity less than 300,000 barrels; adding exemptions for lumber drying kilns (untreated lumber only), coffee roasting, microbreweries, wineries, and small craft distilleries below specific production-related thresholds; and deleting tub grinders and construction and demolition waste crushers from the list of trivial activities. • Rewriting the modification provisions for state facility permits to make them more consistent with the Title V procedures. Significant modifications to state facility permits will require 30 days' public notice, while no public notice is required for minor modifications. Certain changes may be made with advance notification to DEC if specified criteria are met. • Clarifying that renewals of state facility permits that contain enforceable caps accepted to avoid the requirement to obtain a Title V permit require public notice and comment. • Rewriting the operational flexibility provisions for Title V facilities to clarify the rules governing alternative operating scenarios and operational flexibility protocols. • Revising the cap-by-rule provisions to clarify that facilities that cannot cap by rule to avoid reasonably available control technology requirements because there is no applicability threshold or because the applicability threshold is based on the facility's actual rather than potential emissions are still eligible to register. • Making other changes to streamline and clarify the rule. As part of the rulemaking, DEC also relabeled persistent, bioaccumulative and toxic contaminants "high toxicity air contaminants" (HTAC) consistent with 6 NYCRR Part 212, made changes to the HTAC list, and revised Part 212 to correct errors and clarify certain provisions. The rule can be found on DEC's website at: www.dec.ny.gov/docs/air_pdf/adopted201.pdf.	The changes are potentially of interest to any facility with an air registration, state facility permit, or Title V permit under 6 NYCRR Part 201. The revisions are intended to address issues that have arisen since the rules were last revised in 2013 and provide regulatory relief for certain activities, such as biodiesel storage, coffee roasting, and breweries, wineries, and distilleries that might otherwise be required to obtain registrations.	The rule takes effect February 25, 2021. DEC made minor changes to the proposed rule following the public comment period.

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AIR			
NEW YORK STATE **Repeal and Replacement of Gasoline Dispensing Site and Transport Vehicle Rule** 6 NYCRR Part 230	DEC **repealed and replaced its rule governing gasoline dispensing facilities (GDF) and transport vehicles** to eliminate outdated provisions, conform the State regulations with the federal standards set forth in 40 CFR Part 63, subpart CCCCCC, and make other updates and corrections. Key changes to the rule, which is set forth at 6 NYCRR Part 230, include: • ***Stage I and related controls.*** Stage I vapor recovery controls capture emissions associated with filling gasoline storage tanks. With the rulemaking, DEC: (1) incorporated federal provisions requiring "enhanced" Stage I systems to achieve greater volatile organic compound (VOC) reductions for large GDFs (annual throughputs of 1,200,000 gallons or more) and extended the requirements to medium-sized GDFs (annual throughputs between 800,000 and 1,200,000 gallons) in the New York City Metropolitan Area (NYMA); (2) required submerged filling for all GDFs with gasoline storage tanks with capacities greater than 250 gallons; (3) required new/reconstructed gasoline storage tanks to be equipped with a dual-point vapor recovery system at all large GDFs and at mid-sized GDFs located in the NYMA; and (4) required performance tests once every three years at all large GDFs and at mid-sized GDFs in the NYMA. Tanks used to store gasoline drained from vehicles at auto dismantling facilities are exempt from the Stage I requirements. • ***Stage II controls.*** Stage II vapor recovery systems control emissions from vehicle fuel tanks during refueling. The existing regulations require certain GDFs to have Stage II vapor controls. However, because these systems are incompatible with the onboard refueling vapor recovery systems found on virtually all new vehicles, DEC removed Stage II requirements as part of the rulemaking. • ***Other requirements.*** DEC deleted outdated equipment phase-in requirements and registration schedules, required compliance with certain testing and certification requirements, including replacing current pressure-vacuum cargo tank testing and marking provisions with U.S. Department of Transportation requirements, and revised record retention requirements. In addition, DEC added federally-based best management practice (BMP) provisions requiring GDF operators to store gasoline in closed containers, minimize spills, and clean up spills as expeditiously as practicable. These BMP requirements apply to all GDFs with annual throughputs of 120,000 gallons or more. The regulation can be found on DEC's website at: www.dec.ny.gov/docs/air_pdf/adopted230.pdf.	The revisions are potentially of interest to gasoline stations and other GDFs. According to DEC, the potential costs for the repeal and replacement of Part 230 will fall primarily on the approximately 850 medium-sized GDFs located in the NYMA (i.e., those with annual throughputs of 800,000 to 1,200,000 gallons per year), who must upgrade to enhanced Stage I controls and perform more frequent vapor tightness testing. The costs of removing Stage II controls will be offset by eliminating the annual costs for maintaining these systems.	The rule took effect February 11, 2020. DEC made minor non-substantive changes to the regulations following the public comment period.

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AIR			
NEW YORK STATE **Volatile Organic Compound Content Limits for Consumer Products** 6 NYCRR Part 235	DEC **amended its standards governing the VOC content of consumer products** to add new product categories, lower the VOC content of other products, and make other changes to the rule. Under 6 NYCRR Part 235, manufacturers of a range of consumer products from adhesives to wood floor wax must comply with VOC content limits, container labeling, recordkeeping, reporting, and other requirements. With the recent rulemaking, DEC revised Part 235 to: • Add nine new product categories to the rule and lower the VOC content limits for 10 existing categories. New product categories include dual purpose air fresheners, automotive windshield cleaner, disinfectant, multi-purposes solvent, paint thinner, and sanitizer. DEC adopted a January 1, 2022 compliance date for new/reformulated products. • Update definitions to reflect new/revised product categories and make numerous other changes. • Revise Part 200 to incorporate new reference materials, including American Society for Testing Materials testing procedures. • Remove obsolete text and references, including expired sell-by dates. The regulation can be found on DEC's website at: www.dec.ny.gov/docs/air_pdf/adopted235.pdf.	The rule applies to manufacturers of consumer products subject to the standards. DEC revised the standards to make New York's regulations consistent with the model rule developed by the Ozone Transportation Commission and adopted by nearby states. According to DEC, the stricter VOC content limits are needed to help New York State meet the ozone national ambient air quality standards (NAAQS).	The rule took effect February 11, 2021. In response to public comments, DEC extended the compliance deadline from January 1, 2021 to January 1, 2022. In addition, DEC revised the rule to include a sell through provision to allow manufacturers to sell the existing stock of products that were manufactured before the January 1, 2022 compliance date.
NEW YORK STATE **Fuel Composition and Use – Sulfur Limitations** 6 NYCRR Subpart 225-1	DEC **revised its sulfur-in-fuel regulation** to add process sources and incinerators to the list of regulated entities, lower the sulfur-in-fuel limits, and make other changes. 6 NYCRR Subpart 225-1 imposes limits on the sulfur content of distillate oil, residual oil, waste oil, and coal fired in stationary combustion sources. With the recent rulemaking, DEC extended the regulation to cover process sources and incinerators and correct a loophole that allows these sources to purchase higher sulfur content fuel from out-of-state. DEC also reduced the current waste oil sulfur content limit from 0.75% to 0.25% by weight. Finally, DEC corrected certain minor typographical and other errors. The regulation can be found on DEC's website at: www.dec.ny.gov/docs/air_pdf/adopted2251.pdf.	According to DEC, the vast majority of fuels currently on the market already meet the sulfur-in-fuel limits in the regulation. As a result, DEC does not expect the rule to significantly increase fuel costs. DEC contends that the change is necessary to help the state meet the fine particulate matter and sulfur dioxide (SO_2) NAAQS.	The rule took effect February 4, 2021. In response to public comments that noncompliant waste oil remains on the market, DEC extended the compliance date for the new sulfur limit to July 1, 2023.

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AIR			
NEW YORK STATE **Stationary Combustion Installations** 6 NYCRR Subpart 227-1	DEC **replaced and updated its existing regulations limiting particulate matter (PM) emissions from oil and solid fuel-fired stationary combustion installations.** The regulations—which are set forth at 6 NYCRR Subpart 227-1—impose PM emission limits and opacity standards on boilers and other stationary combustion installations. With the recent rulemaking, DEC revised the applicability criteria, lowered the PM emission standards, updated the testing, monitoring, and recordkeeping requirements, and eliminated outdated provisions. Key requirements include: • ***Applicability.*** The revised subpart applies to existing or new stationary combustion installations that either predate or are not otherwise subject to a National Emission Standard for Hazardous Air Pollutants (NESHAP) or New Source Performance Standard (NSPS) for stationary combustion installations. • ***PM emission limits.*** The following combustion installations must comply with a PM emission limit of 0.10 pound per million Btu heat input: solid fuel-fired combustion installations with a maximum heat input capacity of 1 million Btu per hour or more; and combustion installations firing oil or oil in combination with other liquid or gaseous fuels with a maximum heat input capacity of 50 million Btu per hour or more. The limit for solid fuels will take effect four years after promulgation of the regulation. • ***Tune-up.*** All units subject to Subpart 227-1 must be tuned annually. • ***Opacity.*** Consistent with the prior rule, opacity may not exceed 20% (six-minute average) except for one six-minute period per hour of not more than 27% opacity. • ***Performance testing and compliance monitoring.*** The regulations impose new initial and periodic performance testing requirements on all solid fuel-fired units subject to Subpart 227-1 to assess compliance with the PM limit. In addition, consistent with the existing rule, combustion installations with a total maximum heat input of 250 million Btu per hour or more must be equipped with continuous opacity monitors. Owners of oil-fired boilers that individually or together exceed 50 million Btu per hour heat input must keep vendor certified fuel receipts specifying the sulfur content of the fuel burned. DEC also adopted new recordkeeping requirements. The regulation can be found on DEC's website at: www.dec.ny.gov/docs/air_pdf/adopted2271.pdf.	The updated rule is primarily of interest to owners and operators of liquid and solid fuel-fired stationary combustion installations that are not subject to PM standards established under an applicable NSPS or NESHAP. According to DEC, the sulfur-in-fuel limits adopted by the Department in 2013 at 6 NYCRR Subpart 225-1 will likely ensure that most liquid fuel-fired boilers meet the PM standard (since most PM emissions from oil-fired boilers are attributable to the sulfur in the fuel). However, solid fuel-fired boilers may need to install controls to meet the new, stricter standards.	The rule takes effect February 25, 2021. In response to public comment, EPA extended the compliance deadline for solid fuel-fired units from two to four years after the effective date of the rule.

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AIR			
NEW YORK STATE **New Source Review Requirements for Proposed New Major Facilities and Major Modifications to Existing Facilities** 6 NYCRR Part 231	DEC **revised its New Source Review (NSR) requirements for new and significantly modified major sources** to conform to federal NSR requirements and related court rulings, correct typographical errors, and clarify rule language. The NSR program requires newly constructed and significantly modified major stationary sources to comply with strict emission control and other requirements. DEC's Part 231 regulations—which implement the NSR program—were last revised in 2010. Since then, various changes have occurred at the federal level that must be addressed by DEC to maintain state delegation of the NSR program. With this rulemaking, DEC revised Part 231 to address court decisions and other federal developments and make other additions/corrections. • ***Greenhouse gas (GHG) emissions.*** In 2014, the U.S. Supreme Court held that EPA may not require a stationary source to obtain a prevention of significant deterioration (PSD) permit based solely on its GHG emissions, although it may require best available control technology for GHG sources that are required to have a PSD permit due to emissions of other pollutants. With this rulemaking, DEC revised Part 231 to conform to the Court's decision. In addition, DEC updated the references to global warming potentials (a means of comparing the impacts of different GHGs on global warming) to match EPA's current list. • ***Interpollutant trading ratios.*** Fine particulate matter ($PM_{2.5}$) is generated both directly and through the interaction of other pollutants, most notably nitrogen oxides (NOx) and SO_2. To demonstrate compliance with $PM_{2.5}$ requirements under NSR, EPA allows sources to trade among pollutants. DEC revised Part 231 to remove provisions relating to EPA's preferred interpollutant trading ratios. • ***Significant impact levels (SILs) and significant monitoring concentrations (SMCs) for $PM_{2.5}$.*** EPA established thresholds below which sources are not required to conduct ambient air quality monitoring (SMCs) or conduct a detailed assessment of the impact of a project on air quality (SILs). After a federal court vacated and remanded a portion of EPA's PSD rule regarding $PM_{2.5}$, EPA revised its regulations to effectively eliminate the exemption from ambient monitoring by establishing an SMC of zero. DEC revised Part 231 to address the court's decision. • ***Other changes.*** DEC made numerous other changes to the Part 231 regulations, including adding and revising definitions, deleting a reference to its *Guidelines on Dispersion Modeling Procedures for Air Quality Impact Analysis*, clarifying the rules for using NOx offsets, correcting typographical errors, and making other changes. The rule can be found on DEC's website at: www.dec.ny.gov/docs/air_pdf/adopted231.pdf.	The revisions are primarily of interest to major stationary sources that are potentially subject to NSR. The changes are needed to ensure that DEC maintains federal delegation of the NSR program and correct errors identified in the State's existing regulations.	The rule takes effect February 25, 2021. DEC made minor changes to the proposed rule following the public comment period.

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CHEMICALm			
FEDERAL **Toxic Substances Control Act Risk Evaluation for 1,4-Dioxane and C.I. Pigment Violet 29 (PV29)** 86 Fed. Reg. 1495 (Jan. 8, 2021) (1,4-dioxane) and 86 Fed. Reg. 6322 (Jan. 21, 2021) (PV29)	EPA issued **risk evaluations under the Toxic Substances Control Act (TSCA)** for 1,4-dioxane and PV29 assessing whether the 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 PV29. 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. After evaluating 24 conditions of use, EPA determined that 1,4-dioxane presents an unreasonable risk to workers and occupational non-users under 13 conditions of use, but does not pose a risk in relation to consumer uses. EPA also found that 1,4-dioxane does not present an unreasonable risk to the general population based on exposure to surface waters. PV29 is a perylene derivative used to color materials and as an intermediate in other perylene pigments. EPA identified an unreasonable risk to workers and occupational non-users from 10 of 14 conditions of use evaluated. EPA found no unreasonable risk to the environment or to consumers, bystanders or the general public. Notices concerning the risk assessments can be found in the January 8, 2021 and January 21, 2021 Federal Registers at: www.govinfo.gov.	The risk evaluations are potentially of interest to companies that manufacture, import, process, distribute, use or dispose of 1,4-dioxane and PV29. Upon determining that these substances pose 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.	EPA planned 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.

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WATER			
FEDERAL **National Primary Drinking Water Regulations: Lead and Copper Rule Revisions** 40 CFR Parts 141 and 142 86 Fed. Reg. 4198 (Jan. 15, 2021)	EPA adopted **major changes to its lead and copper rule** (LCR) under the Safe Drinking Water Act (SDWA) to target actions to reduce lead exposure to areas with the greatest problems, improve sampling methods, and increase public outreach. The LCR establishes a lead action level of 15 parts per billion (ppb) in drinking water, together with requirements to sample lead service lines (LSL) and implement measures to reduce lead levels via corrosion control, LSL replacement, and other measures. The final rule includes the following changes: • ***Trigger level/treatment.*** EPA established a new "trigger level" for lead of 10 ppb. Exceeding the trigger level requires systems that treat for corrosion to reoptimize their existing treatment. Systems that do not have treatment must conduct a corrosion control study and implement the measures identified in the study if they subsequently exceed the 15 ppb action level. The previous treatment requirements were based primarily on system size. • ***LSL replacement.*** EPA revised the rules to: require water systems to replace the water system-owned portion of an LSL whenever the customer replaces their portion of the line; require initiation of LSL replacement programs when lead levels exceed the 10 ppb trigger level based on a plan developed with the state; require replacement of at least 3% of LSLs annually when 10% of sampling results are above the 15 ppb action level; and allow flexibility for smaller systems that exceed the trigger and action levels. In addition, EPA eliminated a provision allowing municipalities to "test out" to avoid LSL replacement and barred most partial LSL replacements based on evidence showing that they may increase short-term lead exposure. • ***Tap sampling procedures.*** EPA revised the tap sampling rules to require the sampler to draw four liters of water before collecting a test sample so that water is more likely to come from the LSL and not internal plumbing. In addition, EPA is prohibiting removing and/or cleaning faucet aerators and the use of narrow-necked collection bottles, practices which can mask elevated lead levels. Also, to target homes with the highest potential for lead levels, systems must collect samples at homes with LSLs; where a sample exceeds 15 ppb, the system must conduct follow-up sampling. • ***Public information and outreach.*** For the first time, all public water systems must conduct a comprehensive LSL inventory, which will be available to the public. In addition, systems must notify customers of action level exceedances within 24 hours or 72 hours (depending on whether the incident involves a systemwide action level exceedance or a sample taken from the home) and conduct regular outreach to homeowners with LSLs to apprise them of lead exposure protection measures. • ***Lead in schools.*** EPA is requiring lead sampling at schools and childcare facilities served by public water systems. The rule can be found in the January 15, 2021 Federal Register at www.govinfo.gov.	The rule is of interest to owners/operators of public water systems regulated under the LCR. More generally, it is of interest to owners/residents of homes and businesses served by LSLs as well as schools and childcare centers that are served by public water systems and will now be required to test their drinking water for lead. The rulemaking represents the first major revisions to the LCR since it was adopted in 1991 and was part of a larger Trump administration Federal Action Plan to Reduce Childhood Lead Exposures and Associated Health Impacts issued in December 2018. The rule does not include revisions to the copper requirements of the LCR.	The rule takes effect March 16, 2021. EPA made various changes to the proposed rule in response to public comment.

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WATER			
FEDERAL **Reissuance and Modification of Nationwide Permits** 33 CFR Chapter II 86 Fed. Reg. 2744 (Jan. 13, 2021)	The U.S. Army Corps of Engineers (ACOE) **revised certain nationwide permits (NWPs), general conditions, and definitions and adopted several new NWPs**. 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 NWPs for project categories that typically result in minimal disturbances. Certain NWPs require the submission of a pre-construction notification (PCN) prior to proceeding under the NWP. Major changes to the NWPs include: • Adding new NWPs 55 and 56 authorizing seaweed and finfish mariculture activities in navigable waters of the United States, including federal waters on the outer continental shelf. The existing mariculture NWP applies only to shellfish farming. • Modifying NWP 12 to limit it to oil and natural gas pipeline activities while issuing two new NWPs authorizing electric utility line and telecommunications activities (NWP 57) and activities for utility lines not covered by the other utility line permits (e.g., potable water, sewage, wastewater, stormwater, brine, industrial products) (NWP 58). After considering public comments, the ACOE declined to include detailed best management practices as terms and conditions for these permits. • Replaced 12 existing NWPs with new permits that, in most cases, no longer include a 300 linear foot limit for losses of stream beds and rely on the ½ acre disturbance threshold and PCN requirements to limit environmental impacts: 12 (oil and gas pipeline activities, 21 (surface coal mining activities), 29 (residential developments), 39 (commercial and institutional developments), 40 (agricultural activities), 42 (recreational facilities), 43 (stormwater management facilities), 44 (mining activities), 48 (commercial shellfish mariculture activities), 50 (underground coal mining activities), 51 (land-based renewable energy generation facilities), and 52 (water-based renewable energy generation pilot projects). Other changes were made to several of these NWPs. In addition, the ACOE revised certain related definitions and general conditions. After considering changes to other NWPs, the ACOE decided instead to retain the 40 remaining NWPs, which will stay in effect under the 2017 final rule. The existing general conditions and definitions will continue to apply to those 40 permits. The notice can be found in the January 13, 2021 Federal Register at: www.govinfo.gov.	The new/reissued nationwide permits apply to specific activities that could potentially disturb wetlands or waterways. Applicants for certain NWPs must submit PCNs and/or satisfy ACOE regional conditions and conditions imposed by states to preserve coastal zone consistency or protect water quality via the water quality certification process.	The 16 new and revised NWPs and new general conditions applicable to these permits will take effect March 15, 2021. The New York Districts (New York and Buffalo) will issue regional conditions designed to ensure that the NWPs will not have adverse environmental impacts. In addition, DEC will issue its own conditions intended to ensure that projects authorized under the NWPs satisfy the state's water quality certification and coastal zone consistency requirements.

Citation	Summary	Implications	Schedule/Notes
GENERAL/CLIMATE CHANGE			
FEDERAL **Executive Order 13990, Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis; Executive Order 14008, Tackling the Climate Crisis at Home and Abroad**	President Joseph Biden announced a series of initiatives in his first days in office targeted at **reversing key aspects of his predecessor's environmental and climate change-related programs**, many of which are spelled out in various Executive Orders, most notably, Executive Order 13990, Protecting Public Health and the Environment and Restoring Science to Tackle Climate Change, and 14008, Tackling the Climate Crisis at Home and Abroad. • The United States will rejoin the Paris Agreement and reassess its GHG reduction commitment (known as a nationally determined contribution). In addition, President Biden announced plans to prioritize climate change in U.S. foreign policy and expand national climate change initiatives. • EPA will revisit recent changes to the standards for GHG emissions from new, reconstructed, and modified oil and natural gas sources and will propose emission guidelines for existing sources in this sector, which were abandoned by the Trump administration. • The administration will review EPA's rollback of the Obama administration's GHG emission standards for motor vehicles as well as its decision to deny California's request for a waiver authorizing it to implement its own, stricter GHG emissions standards. • Other climate change-related directives include: preparing "social cost of carbon" and related guidance/regulations to help agencies capture the full cost of GHG emissions and enable them to better evaluate the relative costs and benefits of agency action; directing the Council on Environmental Quality to rescind draft guidance on addressing GHG emissions under the National Environmental Policy Act (NEPA); and reviewing and updating Obama administration guidance on GHG emissions/climate change under NEPA. The Biden administration also is expected to revisit the recent overhaul of the NEPA regulations, which has been criticized for effectively barring review of climate change issues by eliminating provisions addressing indirect and cumulative emissions. • Biden revoked a Presidential Memorandum entitled *Promoting Domestic Manufacturing and Job Creation Policies and Procedures Relating to Implementation of Air Quality Standards*, which directed changes in how EPA establishes and implements NAAQS. • EPA will review its previous decision not to regulate mercury emissions from coal and oil-fired power plants, which was based on a finding that it could not legally consider the co-benefits of reducing emissions of other pollutants in assessing the costs/benefits of regulating mercury. In a related development, EPA will review its recently adopted rule establishing procedures for conducting cost/benefit analyses of significant CAA rulemakings. Executive orders can be found at: www.federalregister.gov/presidential-documents/executive-orders/joe-biden/2021.	As President Trump did before him, President Biden plans a wholesale review of his predecessor's environmental and climate change initiatives. Regulations adopted in the waning days of the Trump administration can potentially be reversed by Congress under the Congressional Review Act. Otherwise, the administration must commence a new rulemaking and explain why the changes sought are necessary. Given the number and size of the regulations adopted in the last four years, this represents a massive undertaking. Also, many Trump administration rules were challenged in court. The Biden administration must review these challenges and determine what position it plans to take, including whether to ask the court to stay further litigation pending EPA review of the regulation.	The Executive Orders contain specific deadlines for initiatives identified for review and possible revision.

Proposed 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 86 Fed. Reg. 1362 (Jan. 8, 2021) (mercury cell chlor-alkali plants); 86 Fed. Reg.1390 (Jan. 8, 2021) (primary magnesium refining); 86 Fed. Reg. 1868 (Jan. 11, 2021) (flexible polyurethane foam production and fabrication)	**EPA proposed the results of its residual risk/periodic technology review of the National Emission Standards for Hazardous Air Pollutants for several source categories.** Under CAA § 112, EPA must assess whether any residual risk remains after imposing technology-based NESHAPs on major sources and revise the standard as necessary. EPA also must conduct a periodic review of the technology underlying each major and area source NESHAP to confirm that the standard remains current. The results of that review for three source categories are set forth below: • ***Mercury cell chlor-alkali plant*** (Subpart IIIII). This NESHAP regulates facilities that produce chlorine and caustics in mercury cells. (After initially including a non-mercury cell subcategory, EPA deleted it in 2003.) EPA concluded that the risks remaining after application of the NESHAP are acceptable and that the standard protects public health with an adequate margin of safety. However, EPA proposed work practice standards for the cell room and instrumental monitoring of cell room fugitive emissions based on the technology review. • ***Primary magnesium refining*** (subpart TTTTT). This subpart applies to facilities engaged in producing metallic magnesium. After concluding that revisions were not required to address residual risk, EPA proposed based on the technical review to require continuous pH monitoring for all control devices used to meet the acid gas limits. • ***Flexible polyurethane foam production and fabrication*** (subparts MMMMM and OOOOOO). The major source NESHAP at 40 CFR Part 63, subpart MMMMM applies only to flexible polyurethane foam fabrication sources—facilities engaged in cutting, bonding and/or laminating pieces of flexible polyurethane foam. The minor source standard at subpart OOOOOO applies to the manufacture of foam made from polyurethanes as well as to foam fabrication sources. EPA proposed to find that the risks remaining after application of the major source NESHAP are acceptable and that the standard protects public health with an adequate margin of safety. Following the technology review, EPA proposed to reduce the allowable HAP content of adhesives at both major and area sources. Consistent with other recent NESHAP rulemakings, EPA is requiring submission of electronic copies of compliance reports, including performance test and performance evaluation results, and deleting the exemption for excess emissions during startup, shutdown, and malfunction. The rules can be accessed in the Federal Register 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 regulations cover sources in these categories as follows: mercury cell chlor-alkali plants, 1 facility; primary magnesium refining, 1 facility; major source flexible polyurethane foam fabrication, 3 facilities; area source flexible polyurethane foam production and fabrication, 32 facilities.	EPA is accepting comments on the proposed rules until the following dates: mercury cell chlor-alkali and primary magnesium refining, **February 22, 2021**; flexible polyurethane foam production and fabrication, **February 25, 2021.**

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AIR			
NEW YORK STATE ***Guidelines for the Evaluation and Control of Ambient Air Contaminants under 6 NYCRR Part 212*** DEC Program Policy DAR-1	DEC sought comment on proposed changes to **Program Policy DAR-1**, ***Guidelines for the Evaluation and Control of Ambient Air Contaminants under Part 212,*** which addresses compliance with 6 NYCRR Part 212, DEC's rule establishing emission limits for criteria and toxic air contaminants not regulated under other, more specific emission standards. Topics addressed in DAR-1 include: • ***Permit application submittal requirements.*** This section summarizes the information that must be submitted for Part 212 reviews, including: hourly emission rate potential (ERP) and yearly actual emissions for high toxicity air contaminants (HTACs); ERP for non-HTACs emitted above 100 pounds per year; description of non-exempt process emission sources, processes, and emission points; and any analyses needed to support the application. • ***Part 212 DAR-1 initial review.*** This section identifies which pollutants/operations are subject to Part 212 and the means for demonstrating compliance with the standard (i.e., complying with a federal standard such as a NSPS or NESHAP or conducting a toxic impact assessment). • ***Assign an environmental rating (ER).*** For emissions that must be evaluated on an individual contaminant basis, DEC must assign an ER, which entails determining the initial ER of each contaminant; assessing air quality impacts; identifying/modeling sensitive receptors; and assigning the final ER. • ***Compliance options.*** Once the ER has been assigned, the facility owner has the option of accepting state-enforceable permit conditions to avoid triggering Part 212 or complying with specific emission limits set forth in Part 212. • ***Implementation of Tables 3 and 4 of Part 212-2.3***. This section explains how control levels are assigned to contaminants. • ***Determining applicable emission standards for process operations—T-BACT.*** This section explains when a toxic best available control technology (T-BACT) demonstration is required and the procedures for completing one. The guidance includes three flow charts to aid the user when identifying applicable process emission sources, establishing uniform ERPs, and ascertaining the proper degree of control for applicable process emission sources. The draft revisions to DAR-1 include significantly lowering the guideline concentrations for benzene and ethylene oxide and adding guideline concentrations for perfluorooctanoic acid. The draft revisions to DAR-1 can be found on DEC's website at: www.dec.ny.gov/chemical/106667.html.	The Part 212 regulations apply to all regulated air emission sources that are not subject solely to more specific emission standards. Non-exempt sources emitting contaminants that are not regulated under a NSPS or NESHAP and/or HTACs emitted above a specified threshold will be expected to conduct modeling to show that emissions from the facility do not cause exceedances of the NAAQS or guideline concentrations. Facility owners and operators who submit an application for a new or modified process source or owners submitting a renewal application for their facility with process operations may be subject to Part 212.	The deadline for submitting comments on DAR-1 has closed. This policy, once finalized, will replace the version of DAR-1 previously issued on August 10, 2016.

Citation	Summary	Implications	Schedule/Notes
SOLID WASTE			
NEW YORK STATE **Food Donation and Food Scraps Recycling** 6 NYCRR Part 350	DEC is accepting comments on a proposed rule **implementing the 2019 Food Donation and Scraps Recycling Law**, which requires large generators of food scraps to donate excess edible food and recycle all remaining food scraps if the generator is located within 25 miles of an organics recycler. The rule, which will be set forth at 6 NYCRR Part 350, includes the following basic provisions: • ***Applicability.*** The new rule will affect grocery stores, restaurants, food processors, colleges and others that generate an annual average of two tons per week or more of food scraps at a single location. The rule specifically exempts cities with a population of one million or more (if they continue to implement their own law), hospitals, nursing homes, adult care facilities, and elementary and secondary schools. DEC will use available information to identify regulated food scrap generators each year and notify them that they are expected to comply with the law. • ***Food donation/recycling.*** Regulated generators must donate excess edible food to the maximum extent practicable, separate food scraps from other waste, implement proper food storage practices to prevent odor and pests, and send food scraps to an organics recycler if one with sufficient capacity exists within 25 miles. In the alternative, generators may use an on-site system to recycle their food scraps provided certain conditions are met. Generators may petition DEC for a waiver from compliance due to cost, the lack of availability of an organics recycler, or other factors. Incinerators and landfills must take all reasonable precautions not to accept food scraps from designated food scrap generators. • ***Reporting.*** Regulated food scrap generators must submit an annual report to DEC beginning March 1, 2023 summarizing the food donated and information concerning their food scrap recycling efforts. • ***Waste transporters.*** Waste transporters that collect food scraps from designated food scrap generators must deliver food scraps to an organics recycling facility or a transfer facility that will then send it to an organics recycler. • ***DEC information/outreach.*** DEC must publish on its website lists of designated food scrap generators, food scrap transporters, and organics recycling facilities. The proposed rule can be found on DEC's website at: www.dec.ny.gov/chemical/122245.html.	The proposed rule is primarily of interest to grocery stores, restaurants, food processors, colleges, and other non-exempt facilities that generate significant quantities of food waste. According to DEC, the cost of organics recycling relative to disposal varies greatly. The statute allows generators to seek a waiver from DEC if the cost to recycle food scraps is at least 10% greater than the cost of disposal without organics recycling.	DEC is accepting comments on the proposed rule until **April 27, 2021**. Virtual public hearings on the proposed rule are scheduled for **April 7, 2021** at 1:00 p.m. and 6:00 p.m.

Other Recent Developments (Final)

AIR

FEDERAL: In the waning days of the Trump administration, EPA adopted a rule that **effectively ensures that only power plants will be required to limit GHG emissions under the New Source Performance Standard program**. To issue source category-specific NSPS under 42 USC § 7411, EPA must determine whether air pollutants may reasonably be anticipated to endanger public health and welfare and whether the source category's emissions of air pollutants cause or contribute significantly to that air pollution. In a September 2020 rule rolling back its methane emissions standards for oil and gas sources, EPA decided to require a significant contribution finding (SCF) whenever it decides to regulate a new pollutant under the NSPS for an existing source category, replacing the less stringent rational basis standard. Several months later, EPA articulated a framework under which source categories are considered to significantly contribute to dangerous air pollution due to their GHG emissions that sets an emission threshold of 3% of total gross U.S. GHG emissions as the primary criterion for deciding whether GHGs from a source category are "significant" for purposes of establishing NSPS. Because electricity generating units are the only stationary source category that emit GHGs above the 3% threshold, it is the only source category for which EPA proposes to establish GHG emission standards under the NSPS program. The rule can be found in the January 13, 2021 Federal Register at: www.govinfo.gov.

Implications: Under the rule, EPA would be barred from regulating GHG emissions from any source category except fossil fuel-fired power plants. Note, however, that this controversial rule will likely be reversed by the Biden administration.

NEW YORK STATE: DEC revised DAR-11, ***Electronic Reporting for Air Facilities***, which establishes the methods and procedures to be used by the owners/operators of facilities when submitting reports, certifications, emissions statements, or other items required by air permits. The policy identifies the acceptable formats for annual emission statements per 6 NYCRR Subpart 202-2 and annual compliance certifications and semi-annual reports under the Title V air permitting program. Of particular note, DAR-11 describes in detail the procedures for designating the responsible official, reporting editors, and reporting reviewers required to utilize DEC's electronic reporting system and provides copies of the forms that must be completed to make the necessary designations. It also includes a sample Title V Annual Compliance Certification Report. The guidance can be found on DEC's website at: www.dec.ny.gov/chemical/122255.html.

Implications: The guidance is primarily of interest to air emission sources that are subject to the Title V air permit program.

REMEDIATION

NEW YORK STATE: DEC revised **Program Policy DER-23, Citizen Participation Handbook for Remedial Programs** to make various procedural changes and updates. DER-23 provides guidance to DEC staff and the public on fulfilling the citizen participation

requirements of DEC's various site remediation programs, including the Inactive Hazardous Waste Disposal Site Remedial Program (i.e., State Superfund Program), the Brownfield Cleanup Program, and the Environmental Restoration Program. Among other things, DEC deleted the section pertaining to the Voluntary Cleanup Program, which was terminated in 2018; clarified the information relating to the DER listserve and DECInfo Locator; addressed recent changes to the process for developing, reviewing, and distributing fact sheets and notices; and provided the option of holding virtual meetings when in-person public meetings are not possible. The final policy can be found at: www.dec.ny.gov/regulations/2393.html; it will take effect February 26, 2021.

Implications: The revisions are potentially of interest to individuals and companies involved in site remediation projects overseen by DEC.

WATER

FEDERAL: EPA issued **guidance on applying a recent Supreme Court decision addressing the regulation of discharges to groundwater under the National Pollutant Discharge Elimination System (NPDES) permit program**. The NPDES statute requires a permit to discharge pollutants from a point source to a water of the United States. In *County of Maui v. Hawaii Wildlife Fund,* 140 S. Ct. 1462 (2020), the U.S. Supreme Court addressed whether a discharge to groundwater that eventually reaches a regulated surface water requires a NPDES permit. The court held that a permit is required if the discharge through groundwater is the "functional equivalent of a direct discharge from [a] point source into navigable waters," and identified seven non-exclusive factors that may be relevant to making the necessary determination (e.g., time and distance, nature of material through which pollutant travels, and amount of pollutant entering navigable waters relative to the amount leaving the point source). EPA's guidance provides a history and summary of the *Maui* case and identifies conditions that must be satisfied before the legal obligation to have a NPDES permit under *Maui* is triggered. First, there must be (or will be) an actual discharge of a pollutant to a water of the United States, and second, the discharge must be from a point source. The guidance goes on to emphasize that only a subset of discharges of pollutants that ultimately reach a water of the United States are the "functional equivalent" of a direct discharge to a water of the United States. Finally, the guidance identifies the design and performance of the system or facility from which the pollutant is released as an additional factor that must be considered when conducting a functional equivalence analysis. Notice of the final guidance can be found in the January 21, 2021 Federal Register at: www.govinfo.gov.

Implications: The guidance is intended to clarify how EPA will decide whether a discharge to groundwater is the functional equivalent of a discharge to navigable waters and so requires a NPDES permit. New York specifically regulates discharges to groundwater under its SPDES permit program and so will not be significantly affected by the Supreme Court's decision.

OCCUPATIONAL SAFETY AND HEALTH

FEDERAL: The Occupational Safety and Health Administration (OSHA) issued updated guidance entitled ***Protecting Workers: Guidance on Mitigating and Preventing the Spread of COVID-19 in the Workplace.*** The guidance apprises employers and workers in most workplaces outside of healthcare how to identify risks of being exposed to and/or contracting COVID-19 and helps them determine appropriate control measures. After providing background concerning COVID-19, the guidance identifies the steps for implementing a workplace COVID-19 prevention program, which include, but are not limited to: assigning a workplace coordinator; identifying where and how workers might be exposed to COVID-19 at work, including conducting a hazard assessment; identifying measures to limit the spread in line with a hierarchy of controls; establishing systems for communicating with, educating and training workers on COVID-related matters; performing enhanced cleaning and disinfection after people with suspected or confirmed COVID-19 have been in the facility; addressing screening and testing; and recording and reporting COVID-19 infections and deaths. The guidance also provides details on measures for limiting the spread of COVID-19. The guidance can be found on OSHA's website at: www.osha.gov/coronavirus/safework.

Implications: The guidance is potentially of interest to employers outside the healthcare industry.

GENERAL

NEW YORK STATE: DEC issued CP-71, ***Acquisition and Use of Unmanned Aircraft***, providing guidance to staff on the acquisition and use of unmanned aircraft systems (UAS) such as drones to perform agency work and overseeing the use of UAS by the public on DEC lands. The policy: establishes procedures for DEC acquisition and use of UAS directly, through cooperative agreements, or by hiring contractors to perform work on DEC's behalf; establishes procedures for contracting for UAS services with commercial operators; provides guidance for DEC personnel on managing the public's use of UAS on State lands for recreational, commercial, and other purposes; addresses the need for access and landowner permission where DEC must launch, operate or land a UAS on private property or fly over private property; and addresses the privacy protection, recordkeeping, and Freedom of Information Law requirements for UAS-related activities. The policy also spells out the procedures for DEC staff to obtain Department approval for obtaining emergency and non-emergency mission approval for UAS use as well as additional approvals for forest preserve missions. The policy can be found on DEC's website at: https://www.dec.ny.gov/docs/legal_protection_pdf/cp71.pdf

Implications: The policy is focused primarily on DEC's use of UAS in relation to oversight and use of State lands.

Proposed Statutes, Regulations and Guidance

AIR/BULK STORAGE

FEDERAL: EPA proposed **changes to federal regulations governing the management of gasoline containing between 10% and 15% ethanol (E15)**. In 2010 and 2011, EPA adopted a series of regulations authorizing the sale of E15 for use in model year 2001 and newer light-duty motor vehicles and establishing procedures to prevent its use in unauthorized vehicles and engines, including posting warning labels on E15 pumps. Since then, however, only about one percent of retail gasoline stations have taken the steps necessary to sell E15. With the recent rulemaking, EPA proposed to either eliminate the requirement to label E15 pumps or modify the label by softening its language and appearance "to provide additional clarity to consumers and decrease confusion." According to EPA, although the risk of misfuelling certain engines remains, the retirement of the vehicle fleet since the rule was adopted has significantly reduced the number of vehicles potentially subject to misfuelling. As part of the same rulemaking, EPA also proposed to revise its underground storage tank regulations to address E15 compatibility concerns. Studies show that E15 is more corrosive to certain tank components than gasoline or E10. This fact has discouraged many gasoline station owners from offering E15. EPA proposed to revise the 2015 underground storage tank (UST) regulations to grant certain allowances for compatibility, including allowing owners of tanks who cannot determine compatibility for all equipment and components to satisfy the UST rules if a tank is equipped with secondary containment for tanks and piping and interstitial monitoring. All new/replaced UST systems would be required to ensure that equipment and components are compatible with ethanol blends up to 100%. EPA is accepting comments on the proposed rule until **April 19, 2021**; it can be found in the January 19, 2021 Federal Register at: www.govinfo.gov.

Implications: The rule is primarily of interest to gasoline stations who offer (or who are potentially interested in offering) E15 to their customers.

Upcoming Deadlines

NOTE: This calendar contains items of general interest.

February 22, 2021: Deadline for submitting comments on EPA's *Interim PFAS Destruction and Disposal Guidance.* See the December 22, 2020 Federal Register at www.govinfo.gov for notice of the guidance.

February 22, 2021: Deadline for submitting comments on EPA's residual risk/periodic technology review findings for the mercury cell chlor-alkali plant and primary magnesium refining NESHAPs. See the January 8, 2021 Federal Register at www.govinfo.gov for details.

February 25, 2021: Deadline for submitting comments on EPA's residual risk/periodic technology review findings for the flexible polyurethane foam production and fabrication major and area source categories. See the January 11, 2021 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.

April 7, 2021: Virtual public hearing on DEC's food donation and food scraps recycling regulation scheduled for 1:00 p.m. and 6:00 p.m.

April 19, 2021: Deadline for submitting comments on EPA's proposed revisions to the rules regulating the dispensing and storage of E15 gasoline. See the January 19, 2021 Federal Register at www.govinfo.gov for details.

April 27, 2021: Deadline for submitting comments on DEC's food donation and food scraps recycling regulation. See DEC's website at www.dec.ny.gov/chemical/122245.html for details.