



## March 2011 - Federal & Kentucky Regulatory Report SMG Government Solutions Reg Watch

Prepared by Scott R. Smith

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### Scott's Thoughts

Below is a summary of regulations that I am currently tracking from the Federal Register in February and the State Administrative Regulations from the month of February (published on March 1st). They primarily address energy, environmental, health, safety, educational issues relating to sustainability and public utilities.

EPA is all about air in February: Green House Gases, air quality, oxides, ozone, and even road dust are all covered. OSHA looked into grain handling facilities. DOE focused on planning for 2011-2016 and NEPA considerations. The Army Corps is looking into modifying their nationwide permits. For those with interests in water don't feel left out. There is a new aquatics report that was released and some potential interest in MS4 happenings in Massachusetts.

This is not an all encompassing list of all regulations being considered at the state or federal level. Please contact me if you want to add additional issues, need copies of the proposed or final regulations or have questions about these or other regulations you've heard about.

### **DO YOU KNOW SOMEONE WHO WANTS TO RECEIVE THESE UPDATES?**

Send this to a colleague and tell them to contact us a [scottr.smith@smithmanage.com](mailto:scottr.smith@smithmanage.com) if they want to receive notice when these postings are updated.

### **Questions, Comments, Additional Information**

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### **Kentucky Administration Regulations posted as of March 1, 2011**

Kentucky Anti-degradation Regulations comment period closed on February 28. The SOC should be out by April 15 and presented to the regulation review committee possibly in May.

### **Federal Regulation Review**

#### ***FINAL RULES***

**ENVIRONMENTAL PROTECTION AGENCY 40 CFR Part 60 Standards of Performance for New Stationary Sources CFR Correction In Title 40 of the Code of Federal Regulations, Part 60 (Sec. 60.1 to end of part 60 sections), revised as of July 1, 2010:**

**1. On page 334, at the end of Sec. 60.101a, an effective date note is added to read as follows: Sec. 60.101 a Definitions.**

**Effective Date Note: At 73 FR 78552, Dec. 22, 2008, in Sec.60.101a the definition of ``flare" was stayed from Feb. 24, 2009 until further notice.**

**2. On page 337, at the end of Sec. 60.102a, an effective date note is added to read as follows: Sec. 60.102a Emissions limitations.**

**Effective Date Note: At 73 FR 78552, Dec. 22, 2008, in Sec. 60.102a, paragraph (g) was stayed from Feb. 24, 2009 until further notice.**

3. On page 353, at the end of Sec. 60.107a, an effective date note is added to read as follows: **Sec. 60.107a Monitoring of emissions and operations for fuel gas combustion devices. Effective Date Note: At 73 FR 78552, Dec. 22, 2008, in Sec. 60.107a, paragraphs (d) and (e) were stayed from Feb. 24, 2009 until further notice. [FR Doc. 2011-4310 Filed 2-24-11; 8:45 am] BILLING CODE 1505-01-D**

**February 25, 2011 (Volume 76, Number 38 Page 10524)**

***PROPOSED RULE***

**ENVIRONMENTAL PROTECTION AGENCY 40 CFR Parts 50, 53 and 58 National Ambient Air Quality Standards for Carbon Monoxide ACTION: Proposed rule. February 11, 2011 (Volume 76, Number 29 Page 8157-8220)**

Based on its review of the air quality criteria and the national ambient air quality standards (NAAQS) for carbon monoxide (CO), EPA is proposing to retain the current standards. EPA is also proposing changes to the ambient air monitoring requirements for CO including those related to network design.

DATES: Comments must be received on or before April 12, 2011.

**DEPARTMENT OF ENERGY.10 CFR Part 1021 RIN 1990-AA34. National Environmental Policy Act Implementing Procedures ACTION: Proposed rule: re-opening of public comment period. February 23, 2011 (Volume 76, Number 36 Page 9981-9982)**

The U.S. Department of Energy (DOE) is re-opening the public comment period for proposed amendments to its regulations governing compliance with the National Environmental Policy Act (NEPA), made available for public comment on January 3, 2011 (76 FR 214). This is being done in response to a request on behalf of multiple organizations.

DATES: The public comment period ended on February 17, 2011. The comment period is being re-opened and will close on March 7, 2011.

**ENVIRONMENTAL PROTECTION AGENCY 40 CFR Part 82 Protection of Stratospheric Ozone: Amendments to the Section 608 Leak Repair Requirements ACTION: Proposed rule; reopening of public comment period. February 23, 2011 (Volume 76, Number 36 Page 9987)**

EPA issued a proposed rule in the December 15, 2010, Federal Register proposing changes to the leak repair regulations promulgated under Section 608 of the Clean Air Act Amendments of 1990. In response to stakeholder requests, this action reopens the public comment period through March 25, 2011.

DATES: Comments, identified by docket ID number EPA-HQ-OAR-2003-0167, must be received on or before March 25, 2011.

***COMMENTS AND NOTICES***

**DEPARTMENT OF LABOR. Occupational Safety and Health Administration. Grain Handling Facilities; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements. ACTION: Request for public comments. February 22, 2011 (Volume 76, Number 35 Pages 9815-9817)**

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OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified in its Standard on Grain Handling Facilities (29 CFR 1910.272).

DATES: Comments must be submitted (postmarked, sent, or received) by April 25, 2011.

**ENVIRONMENTAL PROTECTION AGENCY 40 CFR Chapters I through VII Improving EPA Regulations ACTION: Request for comment; notice of public meeting. February 23, 2011 (Volume 76, Number 36 Page 9988-9990)**

On January 18, 2011, President Obama issued Executive Order 13563, "Improving Regulation and Regulatory Review," and called on all Federal agencies to conduct a "retrospective analysis of rules that may be outmoded, ineffective, insufficient, or excessively burdensome and to modify, streamline, expand, or repeal them in accordance with what has been learned." EPA seeks public input on the design of a plan to use for periodic retrospective review of its regulations.

DATES: Comments must be received on or before March 20, 2011. A public meeting will be held on March 14, 2011 in Arlington, VA.

**ENVIRONMENTAL PROTECTION AGENCY Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2009 ACTION: Notice of document availability and request for comments. February 23, 2011 (Volume 76, Number 36 Page 10026)**

The Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2009 is available for public review. Annual U.S. emissions for the period of time from 1990 through 2009 are summarized and presented by source category and sector. The inventory contains estimates of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide (N<sub>2</sub>O), hydrofluorocarbons (HFC), perfluorocarbons (PFC), and sulfur hexafluoride (SF<sub>6</sub>) emissions. The inventory also includes estimates of carbon fluxes in U.S. agricultural and forest lands. The technical approach used in this report to estimate emissions and sinks for greenhouse gases is consistent with the methodologies recommended by the Intergovernmental Panel on Climate Change (IPCC), and reported in a format consistent with the United Nations Framework Convention on Climate Change (UNFCCC) reporting guidelines. The Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2009 is the latest in a series of annual U.S. submissions to the Secretariat of the UNFCCC.

DATES: To ensure your comments are considered for the final version of the document, please submit your comments within 30 days of the appearance of this notice. However, comments received after that date will still be welcomed and be considered for the next edition of this report.

**ENVIRONMENTAL PROTECTION AGENCY. 40 CFR Parts 51 and 93 Official Release of the January 2011 AP-42 Method for Estimating Re-Entrained Road Dust From Paved Roads ACTION: Announcement of Availability. February 4, 2011 (Volume 76, Number 24 Page 6328-6330)**

On January 13, 2011, EPA posted the latest version of the method for estimating re-entrained road dust emissions from cars, trucks, buses, and motorcycles on paved roads. This document approves this method for use in PM<sub>10</sub> and PM<sub>2.5</sub> state air quality implementation plans (SIPs) and regional emissions analyses for transportation conformity determinations ("regional conformity analyses"). This new method is incorporated in Chapter 13 of Compilation of Air Pollutant Emission Factors, AP-42, Fifth Edition,

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Volume I, that was published in January 2011.

Today's action also starts a two-year grace period after which the January 2011 AP-42 method is required to be used in regional conformity analyses in PM10 nonattainment and maintenance areas and any PM2.5 nonattainment and maintenance areas where the EPA regional administrator or the state air quality agency determined that re-entrained road dust is a significant contributor to the area's PM2.5 problem, or if the area has a PM2.5 motor vehicle emissions budget that includes re-entrained road dust.

**DATES:** EPA's approval of the January 2011 AP-42 method for estimating re-entrained road dust from paved roads for SIPs and regional conformity analyses is effective February 4, 2011.

**ENVIRONMENTAL PROTECTION AGENCY. Agency Information Collection Activities; Proposed Collection; Comment Request; Information Collection Request for Superfund Site Evaluation and Hazard Ranking System ACTION: Notice. February 8, 2011 (Volume 76, Number 26 Page 6782-6784)**

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on July 31, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

**DATES:** Comments must be submitted on or before April 11, 2011.

**ENVIRONMENTAL PROTECTION AGENCY Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Production Outlook Reports for Un-Registered Renewable Fuel Producers (New Collection) ACTION: Notice. February 8, 2011 (Volume 76, Number 26 Page 6781-6782)**

**SUMMARY:** In compliance with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request for approval for a new information collection. The ICR, which is abstracted below, describes the nature of the information collection and its estimated burden and cost.

**DATES:** Additional comments may be submitted on or before March 10, 2011.

**ENVIRONMENTAL PROTECTION AGENCY. Notice of Public Hearing and Extension of Public Comment Period of Draft National Pollutant Discharge Elimination System (NPDES) General Permits for Small Municipal Separate Storm Sewer Systems (MS4). ACTION: Notice of public hearing and extension of public comment period of draft NPDES general permits. February 15, 2011 (Volume 76, Number 31 Page 8734-8735)**

The Director of the Office of Ecosystem Protection, Environmental Protection Agency-Region 1 (EPA), issued a Notice of Availability of Draft NPDES general permits for discharges from small MS4s to certain waters of the Commonwealth of Massachusetts on November 4, 2010. A subsequent notice of a public hearing was published on November 29, 2011. Due to inclement weather, the public meeting and hearing for the Draft Massachusetts Interstate, Merrimack and South Coastal Small MS4 General Permit in Leominster, MA on January 12, 2011 were cancelled. EPA has rescheduled the

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hearing and extended the comment permit of the draft permits. Information on the draft permits, appendices and fact sheet is available at: [http://www.epa.gov/ne/npdes/stormwater/mimsc\\_sms4.html](http://www.epa.gov/ne/npdes/stormwater/mimsc_sms4.html).

**DATES:** The public comment period is now from the November 4, 2010 to March 11, 2011. Interested persons may submit comments on the draft general permit as part of the administrative record to the EPA-Region 1, at the address given below, no later than midnight March 11, 2011.

The general permit shall be effective on the date specified in the Federal Register publication of the Notice of Availability of the final general permit. The final general permit will expire five years from the effective date.

**ENVIRONMENTAL PROTECTION AGENCY Release of Final Document Related to the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Sulfur. ACTION: Notice of availability. February 15, 2011 (Volume 76, Number 31 Page 8735-8736)**

The Office of Air Quality Planning and Standards (OAQPS) of EPA is announcing the availability of a document titled, Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Sulfur (Policy Assessment). The Policy Assessment contains staff analyses of the scientific bases for alternative policy options for consideration by the Agency prior to rulemaking.

**DATES:** This Policy Assessment was released to the public via the internet on February 4, 2011

**DEPARTMENT OF DEFENSE Department of the Army, Corps of Engineers ZRIN 0710-ZA05 Proposal To Reissue and Modify Nationwide Permits. ACTION: Notice. February 16, 2011 (Volume 76, Number 32 Page 9173-9207)**

The U.S. Army Corps of Engineers (Corps) is soliciting comments for the reissuance of the existing nationwide permits (NWP), general conditions, and definitions, with some modifications. The Corps is also proposing to issue two new NWPs and two new general conditions. More specifically, the Corps is requesting comments on options for NWP 21, which authorizes discharges of dredged or fill material into waters of the United States associated with surface coal mining activities, such as reissuing NWP 21 with modifications or not reissuing NWP 21. The Corps is also seeking comments on whether to reissue NWP 48 with modifications to authorize new commercial shellfish aquaculture activities or to issue a separate NWP to authorize only new commercial shellfish aquaculture activities. The reissuance process starts with today's publication of the proposed NWPs in the Federal Register for a 60-day comment period and each Corps district will publish a public notice to solicit comments on their proposed regional conditions for the new and modified NWPs. The comment period for these district public notices will be 45 days.

**DATES:** Submit comments on or before April 18, 2011.

**ENVIRONMENTAL PROTECTION AGENCY. Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; National Volatile Organic Compound Emission Standards for Consumer Products (Renewal) ACTION: Notice. February 23, 2011 (Volume 76, Number 36 Page 10025-10026)**

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this document announces that an Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval. This is a request to renew an existing

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approved collection. The ICR which is abstracted below describes the nature of the collection and the estimated burden and cost.

DATES: Additional comments may be submitted on or before March 25, 2011.

**DEPARTMENT OF ENERGY Availability of Fiscal Years 2011-2016 Draft Strategic Plan and Request for Public Comment AGENCY: Department of Energy (DOE). ACTION: Notice of availability of DOE's Draft Strategic Plan and request for comment. February 24, 2011 (Volume 76, Number 37 Page 10342-10343)**

The Department of Energy (DOE) invites the public to comment on the draft DOE 2011 Strategic Plan. The Government Performance and Modernization Act of 2010 requires that federal agencies revise and update their strategic plan at least every four years and, in doing so, solicit the views of interested members of the public during this process.

DATES: Submit comments on or before March 26, 2011.

**ENVIRONMENTAL PROTECTION AGENCY. Aquatic Ecosystems, Water Quality, and Global Change: Challenges of Conducting Multi-Stressor Vulnerability Assessments. ACTION: Notice of public comment period. February 28, 2011 (Volume 76, Number 39 Page 10892-10893)**

EPA is announcing the release of the draft report titled, "Aquatic Ecosystems, Water Quality, and Global Change: Challenges of Conducting Multi-stressor Vulnerability Assessments" (EPA/600/R-11/011) and a 45-day public comment period for the report. The draft document and EPA's peer review charge are available via the Internet on the NCEA home page under the Recent Additions and the Data and Publications menus at <http://www.epa.gov/ncea>.

DATES: The 45-day public comment period begins February 28, 2011, and ends April 14, 2011. Technical comments should be in writing and must be received by EPA by April 14, 2011.

#### **CALL FOR INFORMATION**

None

#### **OTHER**

##### **EPA Announces Next Steps for Greenhouse Gas Emissions Reporting Program**

**WASHINGTON** – The U.S. Environmental Protection Agency is announcing that its Greenhouse Gas (GHG) Reporting Program has recently completed extensive work to develop GHG data reporting requirements for a wide range of different industries in response to Congressional mandates. This program will provide Congress, stakeholder groups and the public with information about these emissions while helping businesses identify cost effective ways to reduce emissions in the future.

To ensure that the requirements are practical and understandable to the thousands of companies already registered to report under the program, the agency is in the process of finalizing a user friendly online electronic reporting platform.

Following conversations with industry and others, and in the interest of providing high quality data to the public this year, EPA is extending this year's reporting deadline – originally March 31 – and plans to have the final uploading tool available this summer, with the data scheduled to be published later this year. This extension will allow EPA to further test the system that facilities will use to submit data and

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give industry the opportunity to test the tool, provide feedback, and have sufficient time to become familiar with the tool prior to reporting. The agency will provide more detail on these intended changes in the coming weeks and will ensure that this reporting extension is in effect before the original reporting deadline of March 31, 2011.

In addition to the nine rulemakings necessary to comply with congressional direction for the program, over the past two years EPA has established a public help center that operates through our website and efficient mechanisms for stakeholders to get answers from EPA experts to detailed technical questions. EPA has also conducted training sessions with each affected sector and held hundreds of meetings with stakeholders across the country.

EPA's greenhouse gas reporting program, launched in October 2009, requires the reporting of GHG emissions data from large emission sources and fuel suppliers across a range of industry sectors. This program will provide data that will help industries find ways to be more efficient and save money.

More information on these actions: <http://www.epa.gov/climatechange/emissions/extension.html>

More information on the GHG Reporting Program:

<http://www.epa.gov/climatechange/emissions/ghgrulemaking.html>

#### **EPA Updates RCRA Frequent Questions Database**

To replace the old RCRA Hotline, EPA has provided a number of online resources containing significant guidance on how the agency administers the RCRA hazardous waste program. One such source of guidance is EPA's Wastes – Frequent Questions database, available at <http://waste.supportportal.com/>. This portion of EPA's website is notable because it allows users to search a database of well over 1,000 common RCRA questions and EPA-supplied answers that the Hotline used to handle.

The agency has recently modified this website (including the URL address), and this article examines EPA's newly revamped Wastes – Frequent Questions Database. The site not only allows for keyword searches and browsing by hazardous waste identification and management topic and subtopic, but it also allows for questions to be submitted:

- *Keyword Searches*—The word search and advanced search option can be accessed on the left side of the home page screen (Area A above). The advance search option allows the user to retrieve documents by word, phrase, guidance identification number, and date of last modification.
- *Browsing by Topic*—Also accessed on the left side of the home page screen (Area A above), these links allow the user to browse frequent questions based on topic and subtopic. Topics include: education, hazardous waste, miscellaneous, non-hazardous waste, partnerships, publications and documents, recycling, and web questions.
- *Ask a Question*—If you cannot find the answer to your specific question using the above search techniques, there is still hope. EPA gives the regulated community the opportunity to submit waste-related questions through this site. This feature is accessed by selecting the dark blue circled question mark near the center of the home page (Area B above). Upon submittal, the question is routed to a technical specialist whose expertise matches your inquiry. While not all questions will have answers (e.g., How does EPA define a RCRA-empty hazardous waste tank?), EPA makes an effort to answer questions in a timely manner (usually within a few days).

On the home page, users can also access three tabs in the center of the page (Area C above): Home, Frequent Questions, and My Stuff:

- *Home*—This tab simply takes the user back to the Frequent Questions home page.
- *Frequent Questions*—From this tab the user can view frequent questions organized by topic: education, hazardous waste, miscellaneous, etc.
- *My Stuff*—Users can review and check the status of pending questions they submitted to EPA.

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