



SMG Reg Watch

April 2014 / Scott R. Smith and Kori J. Andrews

Reg Watch is a periodic summary of regulations that we are currently tracking. The regulations we watch address energy, environmental, health, safety, educational issues relating to sustainability and public utilities.

This is not an all-encompassing list of all regulations being considered at the state or federal level. 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?

Contact us at scottr.smith@smithmanage.com.

QUESTIONS, COMMENTS, ADDITIONAL INFORMATION

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Scott's Thoughts

The environmental issue that most of us were reading and talking about in March and April was EPA's "Waters of the U.S." proposed rule that finally came out in the Federal Register on April 27th. A link to the proposed rule can be found below. This is an expansive document (almost 400 pages) with an overarching purpose to explain what are "Waters of the U.S." or "Navigable Waters". Well guess what? A portion of the proposed regulation explains that you don't have to have water – let alone navigable water -to be included in EPA's sphere of control. What this document does is to compile and justify many of EPA's ideas that were scattered in policy documents or administrative orders. The contents of this

document will also affect the scope of regulatory jurisdiction under Section 402, NPDES permit program, Section 311, oil spill program, Section 303, water quality standards and Section 401, water quality certification. The proposed guidance does not change any of the existing agricultural, forestry, ranching and wastewater treatment system exemptions but those areas will be impacted under other programs.

It's interesting to note that the proposed rule looks a lot like what the government argued and lost in the *Rapanos* case. Congress was certainly aware of this issue because a bipartisan coalition of 170 House lawmakers called for EPA to reconsider the guidelines and instead pursue formal rulemaking or work with Congress to amend the Clean Water Act.

Some additional thoughts on the rule from SMG can be found [here](#). However, more on this will follow.

On April 25th, EPA's Administrator signed a final rule to:

- classify areas currently designated nonattainment for the 1997 and/or 2006 fine particle pollution standards as "Moderate," and
- set a deadline of December 31, 2014, for states to submit any remaining attainment-related state implementation plans (SIPs) and nonattainment New Source Review SIPs required under the Clean Air Act (Act).

The rule isn't posted in the Federal Register yet, but can be found [here](#), along with a fact sheet.

In Kentucky, Jefferson and Bullitt Counties are designated nonattainment areas and are therefore classified as “moderate” in severity of their fine particle pollution problem under this rule.

The fly ash classification rulemaking recently received some attention at EPA. If you remember, in 2010 EPA sought public comment on alternative proposals to regulate coal ash. EPA’s door number one alternative was to regulate it under Subtitle C (RCRA hazardous waste provisions). Their door number two was to regulate the material as a solid but not hazardous waste under Subtitle D. The comment period closed November 19, 2010 but only quiet mutterings from the agency have been heard since. On January 29 the parties in *Appalachian Voices*, filed a consent decree which committed EPA to take final action no later than December 19, 2014 (after November elections). EPA has said that regulation under Subtitle D would be appropriate. We’ll see.

OSHA issued their [final rule on Electric Power Generation, Transmission and Distribution](#) on April 11, 2014 (more information below). The rule contains revised provisions on host employers and contractors, training, job briefings, fall protection, insulation and working position of employees working on or near live parts, minimum approach distances, protection from electric arcs, de-energizing transmission and distribution lines and equipment, protective grounding, operating mechanical equipment near overhead power lines, and working in manholes and vaults.

On April 4, Ohio EPA issued revised General Permits for sources of air emissions at oil and gas well sites. The agency revised the existing GP 12 for well sites and GP 5.1 for unpaved roadways to incorporate new requirements including U.S. EPA’s New Source Performance Standards for the industry (40 CRF Part 60, Subpart OOOO). This is the first state to promulgate new rules under the new Subpart OOOO rules. Other states hopefully will follow with more common sense, regionally realistic approaches to air quality.

On a state level, The Ohio Senate is considering freezing the state’s renewable energy and energy efficiency benchmarks for utilities at 2014 levels indefinitely. A concurrent House bill is also expected. The bill would create a 20 person study group consisting of 10 legislators and 10 people from interested and impacted areas, including customers, to research the impact of the benchmarks.

Here are SMG’s blog entries of note for February. Blog entries are linked to this Reg Watch:

- [How’s My Waterway?](#)
- [Little Information Found on NEPA Cost/Benefit](#)
- [TRI Reporting](#)
- [Continued Reduction of Toxic Environmental Releases in Kentucky](#)
- [Kentucky Cities are Recognized for Energy Star](#)
- [Electronic Submittal of TSCA Information](#)
- [Obama’s Strategy to Cut Methane Emissions](#)

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State Regulation Review

There are no Environmental or Health and Safety regulations up for review. However, Division of Water is getting ready to public notice several [general permits](#), including the Stormwater Construction General Permit. The Kentucky Department for Environmental Protection's public notice page can be accessed [here](#).

Federal Regulation Review

Air

EPA, Air Quality Designations for the 2010 Sulfur Dioxide (SO₂) Primary National Ambient Air Quality Standard (NAAQS): Notice of Action Denying Petition for Reconsideration and Stay Request

Notice of action denying petition for reconsideration and stay request. The Environmental Protection Agency (EPA) is providing notice that it has responded to a petition for reconsideration of a rule published in the **Federal Register** on August 5, 2013, that promulgated the initial air quality designations for the 2010 Primary Sulfur Dioxide (SO₂) National Ambient Air Quality Standard (NAAQS) for certain areas in the United States. The rule is titled, "Air Quality Designations for the 2010 SO₂ Primary NAAQS." Subsequent to publishing the rule, the EPA received three petitions requesting that the EPA reconsider its designation decisions for certain areas. This document announces the EPA's response to one of those petitions: a petition from U.S. Steel requesting the EPA to reconsider its designation

decision for Detroit, Michigan. A subsequent document will announce the EPA's response to the other two petitions. The EPA carefully considered the U.S. Steel's petition and supporting information, along with information contained in the rulemaking docket, in reaching its decision on the petition. The EPA denied the U.S. Steel's petition for reconsideration in a letter to the petitioner dated March 11, 2014. The letter explains the EPA's reasons for the denial. The petitioner also requested that the EPA stay the effectiveness of the designations rule, pending reconsideration. Because the EPA denied the reconsideration request, the EPA also denied the stay request.

DATES: The petition for reconsideration discussed in this document is denied as of April 1, 2014.

EPA, Proposed Information Collection Request; Comment Request; Emissions Certification and Compliance Requirements for Nonroad Compression-Ignition Engines and On-Highway Heavy Duty Engines

Notice: The Environmental Protection Agency is planning to submit an information collection request (ICR), "Emissions Certification and Compliance Requirements for Nonroad Compression-ignition Engines and On-highway Heavy Duty Engines" (EPA ICR No. 1684.18, OMB Control No. 2060- 0287) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension and revision of the ICR,

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which is currently approved through August 31, 2014. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before June 17, 2014.

Water

[EPA, Notification of Two Public Teleconferences of the Science Advisory Board Panel for the Review of the EPA Water Body Connectivity Report](#)

Notice: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces two public teleconferences of the SAB Panel to discuss its draft advisory report concerning the EPA document titled *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence (September, 2013 External Review Draft, EPA/600/R-11/098B)*.

DATES: The SAB Panel for the Review of the EPA Water Body Connectivity Report will conduct public teleconferences on April 28, 2014 and May 2, 2014. Each of the teleconferences will begin at 1:00 p.m. and end at 5:00 p.m. (Eastern Time).

[EPA, Water Quality Standards for the State of Florida's Lakes and Flowing Waters; Withdrawal](#)

Proposed rule: The Environmental Protection Agency (EPA) is proposing to withdraw federal water quality standards applicable to waters of the state of Florida now that Florida has adopted and EPA has approved relevant state standards. On December 6, 2010, EPA published

a rule finalizing numeric nutrient standards for Florida's lakes, springs, and flowing waters outside of the South Florida Nutrient Watershed Region. EPA established these water quality standards to protect Florida's Class I and III freshwaters from nitrogen and phosphorus pollution. On November 30, 2012, June 27, 2013, and September 26, 2013, EPA approved numeric nutrient standards adopted by the state of Florida for certain waters in the state.

Some of the water body types and provisions covered by state-adopted water quality standards were also included in EPA's final inland waters rule (criteria for Florida's lakes and springs, approaches to protect downstream lakes, and a provision for developing Site-Specific Alternative Criteria). EPA is now proposing to withdraw the overlapping federally promulgated water quality standards to allow Florida to implement their state adopted, EPA-approved water quality standards to address nutrient pollution in Florida's waters. Additionally, EPA is not finalizing three 2012 federal proposed rules related to nutrient pollution in Florida.

DATES: Comments must be received on or before June 2, 2014.

[EPA, Stakeholder Input; Experts Forum on Public Health Impacts of Blending at Publicly Owned Treatment Plants](#)

Notice: The Environmental Protection Agency is announcing plans to hold a forum of public health experts in June 2014 to discuss the public health implications of discharges of 'blended' effluent from publicly owned treatment works (POTWs) served by separate sanitary sewers into waterways. The discussion will include

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public health implications of such discharges. Today's notice asks for recommendations of public health experts who would be interested and qualified to participate in the forum. In addition, today's notice seeks recommendations of wastewater treatment plant design and operation experts to serve as advisors to the public health forum participants. Today's notice also provides the public with an opportunity to submit data regarding the performance of municipal wastewater treatment plants during wet weather conditions. Blending is a practice used by some POTWs to manage wastewater when flows to the plant exceed the capacity of the secondary treatment units, which happens most often during wet weather conditions. POTWs engaged in the practice of blending divert excess flow around secondary treatment units and subsequently blend the diverted flows to the portion of flow that received secondary treatment. In some cases the diverted flows receive some additional treatment before blending. The Agency is interested in evaluating the public health implications of different blending scenarios, including scenarios where the diverted flow is subject to supplemental physical/chemical treatment prior to blending and where the diverted flows do not receive any additional treatment prior to blending. The Agency is undertaking this outreach to help advance the Clean Water Act (CWA) objective to restore and maintain the chemical, physical and biological integrity of the nation's waters (CWA, Section 101(a)).

DATES: Suggestions on experts should be made on or before May 4, 2014. Other technical information requested in this notice should be

provided on or before May 19, 2014. We expect to hold the public health forum during June of 2014.

EPA, USACE, [Notice of Availability Regarding the Exemption From Permitting Under Section 404\(f\)\(1\)\(A\) of the Clean Water Act to Certain Agricultural Conservation Practices](#)

Notice of availability and public comment. The U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) are announcing the availability of an interpretive rule to address the exemption from permitting provided under section 404(f)(1)(A) of the Clean Water Act (CWA) for discharges of dredged or fill material associated with certain agricultural conservation practices based on the Natural Resources Conservation Service (NRCS) conservation practice standards that are designed and implemented to protect and enhance water quality. While the interpretive rule is already in effect, the agencies recognize the importance and value of receiving public input on the implementation of this interpretive rule and welcome comments in response to this notice within the next 45 days.

DATES: Submit comments on or before June 5, 2014.

EPA, USACE, [Definition of "Waters of the United States" Under the Clean Water Act](#)

Proposed Rule: The Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) are publishing for public comment a proposed rule defining the scope of waters protected under the Clean Water Act (CWA), in light of the U.S. Supreme Court cases in *U.S. v. Riverside Bayview*, *Rapanos v. United*

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States, and *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC)*, and *Rapanos v. United States (Rapanos)*. This proposal would enhance protection for the nation's public health and aquatic resources, and increase CWA program predictability and consistency by increasing clarity as to the scope of "waters of the United States" protected under the Act.

DATES: Submit comments on or before July 21, 2014.

Waste

EPA, Hazardous Waste Management and the Retail Sector: Providing and Seeking Information on Practices To Enhance Effectiveness to the RCRA Program

Notice; Extension of comment period: The Environmental Protection Agency (EPA or the Agency) is extending the deadline for submitting written comments on the Notice of Data Availability (NODA) published on February 14, 2014. In response to stakeholder requests, EPA is extending the comment period to May 30, 2014.

DATES: Comments on the issued NODA must be received on or before May 30, 2014.

EPA, Additions to List of Section 241.4 Categorical Non-Waste Fuels

Proposed Rule: The Environmental Protection Agency (EPA or the Agency) is proposing amendments to the Non-Hazardous Secondary Materials (NHSM) regulation under the Resource Conservation and Recovery Act (RCRA). The NHSM rule generally established standards and procedures for identifying whether non-hazardous secondary materials

are solid wastes when used as fuels or ingredients in combustion units. In a February 7, 2013 rule, EPA listed particular nonhazardous secondary materials as "categorical non-waste fuels" provided certain conditions are met. EPA also indicated that it would consider adding additional non-hazardous secondary materials to the categorical listings. Today's action proposes to add three materials to the list of categorical nonwaste fuels: Construction and demolition (C&D) wood processed from C&D debris according to best management practices; Paper recycling residuals, including old corrugated cardboard (OCC) rejects, generated from the recycling of recovered paper and paperboard products and burned on-site by paper recycling mills whose boilers are designed to burn solid fuel; and Creosote treated railroad ties that are processed and combusted in units designed to burn both biomass and fuel oil.

DATES: Comments must be received on or before June 13, 2014.

Health and Safety

OSHA, Procedures for Handling Retaliation Complaints Under the Employee Protection Provision of the Consumer Financial Protection Act of 2010

Interim Final Rule; request for comments. This document provides the interim final text of regulations governing the employee protection (or whistleblower) provisions of the Consumer Financial Protection Act of 2010, Section 1057 of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010 (CFPA). This rule establishes procedures and time frames for the handling of retaliation complaints under CFPA, including procedures and time frames for

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employee complaints to the Occupational Safety and Health Administration (OSHA), investigations by OSHA, appeals of OSHA determinations to an administrative law judge (ALJ) for a hearing de novo, hearings by ALJs, review of ALJ decisions by the Administrative Review Board (ARB) (acting on behalf of the Secretary of Labor) and judicial review of the Secretary's final decision.

DATES: This interim final rule is effective on April 3, 2014. Comments and additional materials must be submitted (post-marked, sent or received) by June 2, 2014.

EPA, [Notice of Availability of the Framework for Human Health Risk Assessment To Inform Decision Making](#)

Notice of availability. The Environmental Protection Agency (EPA) is announcing the release of the *Framework for Human Health Risk Assessment to Inform Decision Making*. This document was developed by the EPA's Risk Assessment Forum and describes a *Framework* for conducting human health risk assessments that are responsive to the needs of Agency decision making. The document was developed to provide information to Agency staff and managers, external stakeholders, and the public.

DATES: The document will be available for use by EPA risk assessors and other interested parties on April 15, 2014.

OSHA, [Electric Power Generation, Transmission, and Distribution; Electrical Protective Equipment](#)

Final Rule: OSHA last issued rules for the construction of transmission and distribution

installations in 1972. Those provisions are now out of date and inconsistent with the more recently promulgated general industry standard covering the operation and maintenance of electric power generation, transmission, and distribution lines and equipment. OSHA is revising the construction standard to make it more consistent with the general industry standard and is making some revisions to both the construction and general industry requirements. The final rules for general industry and construction include new or revised provisions on host employers and contractors, training, job briefings, fall protection, insulation and working position of employees working on or near live parts, minimum approach distances, protection from electric arcs, deenergizing transmission and distribution lines and equipment, protective grounding, operating mechanical equipment near overhead power lines, and working in manholes and vaults. The revised standards will ensure that employers, when appropriate, must meet consistent requirements for work performed under the construction and general industry standards. The final rule also revises the general industry and construction standards for electrical protective equipment. The existing construction standard for the design of electrical protective equipment, which applies only to electric power transmission and distribution work, adopts several national consensus standards by reference. The new standard for electrical protective equipment, which matches the corresponding general industry standard, applies to all construction work and replaces the incorporation of out-of-date consensus standards with a set of

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performance oriented requirements that is consistent with the latest revisions of the relevant consensus standards. The final construction rule also includes new requirements for the safe use and care of electrical protective equipment to complement the equipment design provisions. Both the general industry and construction standards for electrical protective equipment will include new requirements for equipment made of materials other than rubber. OSHA is also revising the general industry standard for foot protection. This standard applies to employers performing work on electric power generation, transmission, and distribution installations, as well as employers in other industries. The final rule removes the requirement for employees to wear protective footwear as protection against electric shock.

DATES: The final rule becomes effective on July 10, 2014. (Certain provisions have compliance deadlines after this date as explained later in this preamble.)

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