



SMG Reg Watch

April 2013 / 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

Construction stormwater is a critical economic issue because it impacts groups that have driven past economic recoveries-homebuilders, developers and road and other general contractors. In April, EPA published changes to Construction and Development Point Source Categories. They formally deleted the numeric turbidity standard for stormwater discharges from C&D sites and offered clarification to several best management practices required of operators of C&D sites. This is a good step forward by the agency even if it was required to settle a challenge to their new stormwater rules. While it can be seen as a victory by industry, the construction industry needs to be vigilant as states begin to integrate EPA's stormwater ideas into new General Construction Stormwater Permits. Many of these permits will be coming up for renewal over the next few years. The industry must get involved early with your state water regulatory group and hang in there because there are a number of changes state

and federal regulators will want to make to those permits.

The concept of a Permit actually meaning something took a step back in April with the Court of Appeals for the District of Columbia issuing an opinion that EPA could invalidate a discharge permit issued four years prior by the Corps of Engineers. EPA's veto is extremely rare but it appears, in their minds, that their war on coal justifies their action. There are approximately 13 examples of the use of EPA's veto despite USACE processing approximately 80,000 permits per year. An appeal of this decision is imperative. Stay tuned on this one.

EPA is seeking comments on two proposed guidance documents on vapor intrusion. While this issue has been around for a while (2002 was EPA's last guidance on the issue) there are very few professionals that understand how and when to implement this tool. Comments are due May 24th (a request for extension would be a very good idea). Because these concepts will certainly creep into state closure requirements in the future, these documents need to be thoroughly reviewed and comments submitted to EPA.

EPA continues their incessant march toward more greenhouse gas regulation with rules regarding the greenhouse gas reporting rule, confidentiality determinations and information regarding global warming potential values. With Congress having no desire to develop federal laws regarding this matter, prepare for more administrative rulemaking on this issue.

State regulators protection of their primacy programs is imperative. Establishment of water quality standards is clearly a state responsibility but EPA stepped over West Virginia in April and added a large number of stream segments to their Section 303(d) list. There should be a BIG push back from the Mountaineers on this one.

Stay tuned-things will get more interesting!

State Regulation Review

At the April Administrative Regulation Review Subcommittee meeting there was substantial discussion regarding The Division of Water's Water Quality Standards [401 KAR 10:031](#). The selenium issue was the primary topic discussed by the Committee. This standard has broad implications to mining but also anyone else who disturbs soil and rock. After much discussion, the Committee approved the revised regulation. A review of the Division of Water's approach to this issue is encouraged. EPA will promulgate their selenium rule in the not too distant future so while this issue has been settled temporarily in Kentucky, it will be around for some time to come.

Federal Regulation Review

EPA, [Effluent Limitations Guidelines and Standards for the Construction and Development Point Source Category](#)

Proposed rule: EPA is proposing changes to the effluent limitations guidelines and standards for the Construction and Development point source category. EPA is proposing these changes pursuant to a settlement agreement to resolve litigation. This proposed rule would withdraw the numeric discharge standards, which are currently stayed, and change several of the non-numeric provisions of the existing rule.

DATES: Comments must be received on or before May 31, 2013.

EPA, [2013 Revisions to the Greenhouse Gas Reporting Rule and Proposed Confidentiality Determinations for New or Substantially Revised Data Elements](#)

Proposed rule: The EPA is proposing to amend the Greenhouse Gas Reporting Rule and to clarify or change specific provisions. Particularly, the EPA is proposing to amend a

table in the General Provisions, to reflect revised global warming potentials of some greenhouse gases that have been published by the Intergovernmental Panel on Climate Change and to add global warming potentials for certain fluorinated greenhouse gases not currently listed in the table. This action also proposes confidentiality determinations for the reporting of new or substantially revised (i.e., requiring additional or different data to be reported) data elements contained in these proposed amendments to the Greenhouse Gas Reporting Rule.

DATES: Comments must be received on or before May 17, 2013.

EPA, [Mandatory Reporting of Greenhouse Gases: Notice of Data Availability Regarding Global Warming Potential Values for Certain Fluorinated Greenhouse Gases and Fluorinated Heat Transfer Fluids](#)

Notice of data availability and request for comment: The EPA is announcing to the public the availability of estimated global warming potentials, as well as data and analysis submitted in support of them, for eight fluorinated heat transfer fluids. EPA is requesting comments on the estimated global warming potentials and the data and analysis supporting them. They are also requesting comment on the cited global warming potentials for 35 other fluorinated greenhouse gases and fluorinated heat transfer fluids for which EPA does not currently possess supporting data and analysis. The EPA is requesting comment on the global warming potentials of all 43 chemicals as they consider adding these global warming potentials to the Greenhouse Gas Reporting rule.

DATES: Comments must be received on or before May 6, 2013.

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EPA, [Clean Water Act: Availability of List Decisions](#)

Notice and initial request for public input: The Clean Water Act requires that States periodically submit, and EPA approve or disapprove, lists of waters (called “Section 303(d) lists”) for which existing technology-based pollution controls are not stringent enough to attain or maintain State water quality standards and for which total maximum daily loads (TMDLs) must be prepared. Waters identified on Section 303(d) lists are called “water quality limited segments.” This notice announces EPA’s proposal to include in West Virginia’s Section 303(d) list certain water quality limited segments and requests public comment.

On March 25, 2012 EPA partially approved West Virginia’s 2012 Section 303(d) list of water quality limited segments and associated pollutants and partially disapproved West Virginia’s submission to the extent that West Virginia did not identify certain water quality limited segments. EPA proposes to identify these additional water quality limited segments for inclusion on the State’s 2012 section 303(d) list. The proposed water quality limited segments are identified in Enclosure 3 of the decision document available at the <http://www.epa.gov/req3wapd/tmdl/303list.html>. EPA is providing the public the opportunity to review its decision to add these water quality limited segments to West Virginia’s 2012 Section 303(d) list. EPA will consider public comments before transmitting its final listing decision to the State.

DATES: Comments had to be submitted in writing to EPA on or before May 8, 2013.

EPA, [Final National Pollutant Discharge Elimination System \(NPDES\) General Permit for Discharges Incidental to the Normal Operation of a Vessel](#)

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Notice of final permit issuance: EPA Regions 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 are finalizing the NPDES Vessel General Permit (VGP) to authorize discharges incidental to the normal operation of non-military and non-recreational vessels greater than or equal to 79 feet in length. This VGP, which has an effective date of December 19, 2013, will replace the current VGP, which was issued in December 2008 and expires on December 19, 2013. EPA provided notice of the availability of the draft permit and accompanying fact sheet for public comment in the **Federal Register** on December 8, 2011. At that time, EPA also provided notice of availability of the draft small Vessel General Permit, on which the Agency has not yet taken final action.

DATES: This permit is effective on December 19, 2013.

EPA, [Oil and Natural Gas Sector: Reconsideration of Certain Provisions of New Source Performance Standards](#)

Proposed rule; notice of public hearing: On August 16, 2012, the EPA published final new source performance standards for the oil and natural gas sector. The Administrator received petitions for reconsideration of certain aspects of the standards. In this notice, the EPA is announcing proposed amendments as a result of reconsideration of certain issues related to implementation of storage vessel provisions. The proposed amendments also correct technical errors that were inadvertently included in the final rule.

DATES: *Comments.* Comments must be received on or before May 13, 2013, unless a public hearing is requested by April 17, 2013. If a hearing is requested on this proposed rule, written comments must be received by May 28, 2013.



[EPA, Notice of Public Meeting/Webinar: EPA Method Development Update on Drinking Water Testing Methods for Contaminant Candidate List Contaminants](#)

Notice of public meeting: The U.S. Environmental Protection Agency (EPA) Office of Ground Water and Drinking Water, Standards and Risk Management Division's Technical Support Center (TSC) announces a public meeting/webinar to discuss analytical testing procedures for unregulated contaminants in drinking water that are, or are being considered for inclusion, on the Contaminant Candidate List (CCL). Technical experts from TSC and the EPA Office of Research and Development's National Exposure Research Laboratory Microbiological and Chemical Exposure Assessment Research Division will describe methods currently in development for many CCL contaminants, with an expectation that several of these methods will support future cycles of the Unregulated Contaminant Monitoring Rule (UCMR) program. The agenda for the public meeting/webinar will include time for public comment for those that pre-register to present information and technical input on analytical testing procedures.

DATES: The public meeting/webinar will be held on Wednesday, May 15, 2013, from 9:00 a.m. to 4:30 p.m., Eastern Time. The meeting/webinar materials will be available from May 15, 2013, to June 17, 2013 to accommodate post meeting comments. Persons wishing to attend the meeting in-person or on-line via the webinar must register by May 1, 2013, as described in the **SUPPLEMENTARY INFORMATION** section, that can be found in the hyperlink, above.

[EPA, FY2013 Supplemental Funding for Brownfields Revolving Loan Fund \(RLF\) Grantees](#)

Notice of Availability of Funds: EPA's Office of Brownfields and Land Revitalization plans to make available approximately \$6 million to

provide supplemental funds to Revolving Loan Fund capitalization grants previously awarded under section 104(k)(3) of CERCLA. EPA will consider awarding supplemental funding only to RLF grantees who have demonstrated an ability to deliver programmatic results by making at least on loan or subgrant.

Dates: Requests. Funding must be submitted to EPA Regional Brownfields Coordinator by May 20, 2013.

[Department of Labor-Mine Safety and Health Administration, 30 CFR Part 48 Training and Retraining of Miners](#)

Correction Experienced Miner Training: Added course requirements to include dust, noise and other health measurements as well as health provisions of the Act and an explanation of warning labels and any health control plan in effect. There is also on the same page of this Federal Register a correction regarding Training Plans.

[EPA, LWD, Inc. Superfund Site; Calvert City, Marshall County, Kentucky; Notice of Settlement](#)

Notice of Settlement: EPA has entered into a settlement with 125 parties and 19 Federal Agencies addressing past costs concerning the LWD, Inc. Superfund Site located in Calvert City, Kentucky.

DATES: The Agency will consider public comments on the settlement until May 20, 2013.

[OSHA, Cranes and Derricks in Construction: Underground Construction and Demolition](#)

Final Rule: OSHA clarified the text of previous rules into this final rule. It applies to the cranes and derricks standard to underground construction work and demolition work.

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Dates: This final rule is effective May 23, 2013. Petitions for review of the final rule are due on June 24, 2013.

[EPA, Reconsideration of Certain New Source Issues: National Emission Standards for Hazardous Air Pollutants From Coal- and-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units](#)

Final rule: On November 30, 2012, EPA granted reconsideration of, proposed, and requested comment on a limited set of issues related to these issues. They also proposed technical corrections to both the Mercury and Air Toxics Standards NESHAP and the Utility New Source Performance Standard. EPA is now taking final action on the revised new source numerical standards in the MATS NESHAP and the definitional and monitoring provisions in the Utility NSPS. EPA is also making certain technical corrections to both the MATS NESHAP and the Utility NSPS. EPA is not taking final action on requirements applicable to startup and shutdown provisions related to the MATS NESHAP or provisions related to the to the PM standard in the Utility NSPS.

Dates: The effective date of this rule is April 24, 2013.

Litigation

On April 17, several environmental groups and states sent a 60 day notice of their intent to sue EPA for missing the April 13 final rule deadline for a regulations involving new fossil fuel fired plants. The rule involved new source performance standards for carbon dioxide emissions.

The United States Court of Appeals for the District of Columbia Circuit issued an opinion on April 23 in *Mingo Logan Coal Co. v. United States Environmental Protection Agency* upholding EPA's invalidation of a Section 404 discharge permit issued four years prior by the Corps of Engineers.

Guidance Document-Vapor Intrusion

Eleven years after releasing an initial draft, EPA has finally issued for public comment its proposed vapor intrusion guidance documents: "Final Guidance for Assessing and Mitigating the Vapor Intrusion Pathway from Subsurface Sources to Indoor Air" (VI Guidance) and the "Guidance For Addressing Petroleum Vapor Intrusion at Leaking Underground Storage Tank Sites" (Petroleum VI guidance). These documents can be found at EPA Vapor Intrusion web site <http://www.gpo.gov/fdsys/pkg/FR-2013-04-24/pdf/2013-07859.pdf>

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