



SMG Reg Watch

August 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

In August 29, Smith Management Group, on behalf of 16 Kentucky associations sent a letter to Governor Beshear asking for the Commonwealth of Kentucky to provide comments on EPA and the Corps [proposed Waters of the US](#) rule. Surprisingly, the Governor's Office declined to submit comments, stating that this was a federal action and to contact U.S. Congressman Andy Barr's office. Similarly, the Division of Water's position on the rule stated at the Kentucky Chamber of Commerce's Environmental Permitting Conference was that "the proposed rule doesn't change anything." However, Andy Barr's office said that they received over 200 letters of

support for [H.R. 5078](#) - the Waters of the United States Regulatory Overreach Protection Act. Can this many impacted parties be mistaken that this proposed rule imposes significant new requirements for the regulated community? It is hard for me to understand why the Governor's Office refused to allow their knowledgeable employees to submit comments that might provide EPA and the Corps some ways to improve this rule.

Recently, EPA issued [guidance](#) to its Regional Administrators that addresses some of the questions raised by the decision in [Utility Air Regulatory Group v. United States Environmental Protection Agency, 134 S.Ct. 2427 \(U.S. June 23, 2014\) \("UARG"\)](#). One of the biggest questions regarding this issue is how to treat requirements in states that have adopted the Tailoring Rule approach and how to apply PSD permitting provisions to modifications of major sources of emissions. EPA noted the need for Regional personnel to confer with local and state permitting authorities. It is critical for facilities undergoing any permitting actions now or in the near future to coordinate closely with state, local agencies regarding this issue.

The U.S. Government Accountability Office (GAO) recently released a report entitled ["Drinking Water: EPA Program to Protect Underground Sources from Injection of Fluids Associated with Oil and Gas Production Needs Improvement,"](#) in which

the GAO reviews EPA's oversight of its Underground Injection Control (UIC) class II program. According to the GAO, over 172,000 fluid injection wells used in conjunction with oil and gas production or related disposal/storage activities are subject to regulation under this program and approved state class II programs. The GAO observes, "Because a significant percentage of the population gets its drinking water from underground aquifers, these wells have raised concerns about the safety of the nation's drinking water."

Don't forget that rules under [Section 316\(b\)](#) of the Clean Water Act governing the use of cooling water at existing power plants and industrial facilities are effective on October 14, 2014 (the "Final Rule").

The U.S. Fish and Wildlife Service (FWS) recently proposed a new policy – the [Policy Regarding Voluntary Prelisting Conservation Actions](#) – that would give landowners credit for undertaking voluntary conservation measures for imperiled species prior to their listing under the Endangered Species Act (ESA). The proposed policy was published in the *Federal Register* on July 22, 2014. Interested parties may provide comments to the FWS during the 60-day comment period which ends September 22, 2014.

Also note that the Fish and Wildlife Service has added a species that can be found in

Kentucky. The [Physaria globosa](#) (Short's bladderpod) occurs in Indiana, Kentucky and Tennessee.

The federal Office of Surface Mining Reclamation and Enforcement (OSM) announced that it is considering issuing regulations under the Surface Mining Control and Reclamation Act (SMCRA) that would prohibit the production of visible nitrogen oxide (NO_x) emissions during blasting at surface coal mining operations. What's the feasibility of actually determining NO_x emissions during blasting. Any volunteers to give it a try?

State Regulation Review

The following are Proposed Amendments that are being addressed by the Administrative Regulation Review Subcommittee:

LABOR CABINET: Department of Workplace Standards: Division of Occupational Safety and Health Compliance: Division of Occupational Safety and Health Education and Training: Occupational Safety and Health

[803 KAR 2:400](#). Adoption of 29 C.F.R. 1926.1-6.

[803 KAR 2:406](#). Signs, signals, and barricades.

[803 KAR 2:412](#). Fall protection.

[803 KAR 2:505](#). Cranes and derricks in construction.

ENERGY AND ENVIRONMENT CABINET: Department of Environmental Protection: Division of Water: Public Water Supply

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[401 KAR 8:200](#). Microbiological monitoring.

[401 KAR 8:300](#). Lead and copper.

[401 KAR 8:700](#). Bottled water

**CABINET FOR HEALTH AND FAMILY SERVICES:
Department for Public Health Division of Public
Health Protection and Safety
Radon**

[902 KAR 95:040](#). Radon Contractor Certification Program.

Federal Regulation Review

EPA, [Proposed Information Collection Request; Comment Request; Implementation of the Oil Pollution Act Facility Response Plan Requirements \(Renewal\)](#)

Notice: The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), “Oil Pollution Act Facility Response Plans—40 CFR part 112.20” (EPA ICR No. 1630.12, OMB Control No. 2050–0135) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the ICR, which is currently approved through October 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 September 30, 2014.

Fish and Wildlife Service, Interior. [Endangered and Threatened Wildlife and Plants; Endangered Status for *Physaria globosa* \(Short’s Bladderpod\), *Helianthus verticillatus* \(Whorled sunflower\), and *Leavenworthia crassa* \(Fleshy-Fruit Gladecress\)](#)

Final rule. The U.S. Fish and Wildlife Service (Service), determine endangered species status under the Endangered Species Act of 1973 (Act), as amended, for *Physaria globosa* (Short’s bladderpod), *Helianthus verticillatus* (whorled sunflower), and *Leavenworthia crassa* (fleshy-fruit gladecress). Short’s bladderpod occurs in Indiana, Kentucky, and Tennessee. Whorled sunflower occurs in Alabama, Georgia, and Tennessee. Fleshy-fruit gladecress occurs only in Alabama. The effect of this regulation will be to add these species to the List of Endangered and Threatened Plants.

DATES: This rule is effective September 2, 2014.

EPA, [Approach for Estimating Exposures and Incremental Health Effects From Lead Due to Renovation, Repair, and Painting Activities in Public and Commercial Buildings; Notice of Availability and Request for Comment](#)

Notice: EPA is currently in the process of determining whether or not lead-based paint hazards are created by renovation, repair, and painting (RRP) activities in public and commercial buildings (P&CBs), as required under the Toxic Substances Control Act (TSCA). EPA is making the following documents available for public review and comment before they undergo external peer review: “Approach for Estimating Exposures and Incremental Health Effects from Lead Due to Renovation, Repair, and Painting Activities in Public and Commercial Buildings”

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(the Approach); the detailed appendices for the Approach; and a supplementary report, entitled “Developing a Concentration-Response Function for Pb Exposure and Cardiovascular Disease-Related Mortality.” Together, these documents describe a methodology for estimating exposures and incremental health effects created by renovations of P&CBs. This methodology could be used to identify and evaluate hazards from RRP in P&CBs. Also available for public review and comment is a list of charge questions that will be directed to the external peer reviewers for the Approach.

DATES: Comments must be submitted September 22, 2014.

Occupational Safety and Health Administration, [Improve Tracking of Workplace Injuries and Illnesses](#)

Supplemental notice of proposed rulemaking: On November 08, 2013, OSHA published a notice of proposed rulemaking to amend the agency’s regulation on the annual OSHA injury and illness reporting requirements to add three new electronic reporting obligations. At a public meeting on the proposal, many stakeholders expressed concern that the proposal could motivate employers to under-record their employees’ injuries and illnesses. They expressed concern that the proposal could promote an increase in workplace policies and procedures that deter or discourage employees from reporting work related injuries and illnesses. These include adopting unreasonable requirements for reporting injuries and illnesses and retaliating against employees who report injuries and illnesses. In order to protect the integrity of the injury and illness data, OSHA is

considering adding provisions that will make it a violation for an employer to discourage employee reporting in these ways. To facilitate further evaluation of this issue, OSHA is extending the comment period for 60 days for public comment on this issue. In promulgating a final rule, OSHA will consider the comments already received as well as the information it receives in response to this notice.

DATES: The comment period for the proposed rule published November 8, 2013 (78 FR 67254) is extended. Comments must be submitted by October 14, 2014.

EPA, [National Pollutant Discharge Elimination System—Final Regulations To Establish Requirements for Cooling Water Intake Structures at Existing Facilities and Amend Requirements at Phase I Facilities](#)

Final rule. The purpose of this action is to reduce impingement and entrainment of fish and other aquatic organisms at cooling water intake structures used by certain existing power generation and manufacturing facilities for the withdrawal of cooling water from waters of the United States. This rule establishes requirements under section 316(b) of the Clean Water Act (CWA) for existing power generating facilities and existing manufacturing and industrial facilities that are designed to withdraw more than 2 million gallons per day (mgd) of water from waters of the United States and use at least 25 percent of the water they withdraw exclusively for cooling purposes. These national requirements, which will be implemented through National Pollutant Discharge Elimination System (NPDES) permits, apply to the location, design, construction, and capacity

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of cooling water intake structures (CWIS) at regulated facilities and provide requirements that reflect the best technology available (BTA) for minimizing adverse environmental impact. On April 20, 2011, EPA published a proposed rule that included several options for addressing these impacts. Subsequently, EPA published two Notices of Data Availability (NODA), on June 11, 2012 and June 12, 2012, that further clarified EPA's proposed approach. This final rule also responds to judicial remand of aspects of the previously promulgated Phase II and Phase III section 316(b) rules. In addition, EPA is also responding to an earlier judicial decision by removing from the previously promulgated Phase I new facility rule a restoration-based compliance alternative and the associated monitoring and demonstration requirements.

DATES: This regulation is effective October 14, 2014. For judicial review purposes, this final rule is promulgated as of 1 p.m. EDT (Eastern Daylight Time) on August 29, 2014 as provided in 40 CFR 23.2.

[EPA, Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Industrial, Commercial, and Institutional Boilers Area Sources \(Renewal\)](#)

Notice: The Environmental Protection Agency has submitted an information collection request (ICR), "NESHAP for Industrial, Commercial, and Institutional Boilers Area Sources (Renewal)" (EPA ICR No. 2253.03, OMB Control No. 2060-0668), 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.*). This is a proposed extension of the

ICR, which is currently approved through September 30, 2014. Public comments were previously requested via the **Federal Register** (78 FR 35023) on June 11, 2013, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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: Additional comments may be submitted on or before September 17, 2014.

[EPA, Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Paint Stripping and Miscellaneous Surface Coating at Area Sources \(Renewal\)](#)

Notice: The Environmental Protection Agency has submitted an information collection request (ICR), "NESHAP for Paint Stripping and Miscellaneous Surface Coating at Area Sources (Renewal)" (EPA ICR No. 2268.04, OMB Control No. 2060-0607) 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.*). This is a proposed extension of the ICR, which is currently approved through August 31, 2013. Public comments were previously requested via the **Federal Register** (78 FR 35023) on June 11, 2013 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. An Agency may not conduct or sponsor and a

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person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before September 17, 2014.

Bureau of Safety and Environmental Enforcement (BSEE), [Information Collection Activities: Oil and Gas Production Safety Systems; Proposed Collection; Comment Request](#)

60-day Notice: To comply with the Paperwork Reduction Act of 1995 (PRA), BSEE is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns a revision to the paperwork requirements in the regulations under Subpart H, *Oil and Gas Production Safety Systems*.

DATES: You must submit comments by October 17, 2014.

EPA, [National Pollutant Discharge Elimination System \(NPDES\): Use of Sufficiently Sensitive Test Methods for Permit Applications and Reporting](#)

Final rule. The Environmental Protection Agency (EPA) is finalizing minor amendments to its Clean Water Act (CWA) regulations to codify that under the National Pollutant Discharge Elimination System (NPDES) program, permit applicants must use “sufficiently sensitive” analytical test methods when completing an NPDES permit application and the Director must prescribe that only “sufficiently sensitive” methods be used for analyses of pollutants or pollutant parameters under an NPDES permit.

The final rule is based on requirements in the CWA and clarifies existing EPA regulations. It also codifies existing EPA guidance on the use of “sufficiently sensitive” analytical methods with respect to measurement of mercury and extends the approach outlined in that guidance to the NPDES program more generally. Specifically, EPA is modifying existing NPDES application, compliance monitoring, and analytical methods regulations. The amendments in this rulemaking affect only chemical-specific methods; they do not apply to the Whole Effluent Toxicity (WET) methods or their use.

DATES: These final regulations are effective September 18, 2014. For judicial review purposes, this final rule is promulgated as of 1:00 p.m. Eastern Time, on September 2, 2014, as provided in 40 CFR 23.2.

Fish & Wildlife Service, [Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Physaria globosa* \(Short's bladderpod\), *Helianthus verticillatus* \(whorled sunflower\), and *Leavenworthia crassa* \(fleshy-fruit gladececross\)](#)

Final rule: The U.S. Fish and Wildlife Service (Service), designate critical habitat for *Physaria globosa* (Short's bladderpod), *Helianthus verticillatus* (whorled sunflower), and *Leavenworthia crassa* (fleshy-fruit gladececross) under the Endangered Species Act of 1973, as amended (Act). In total, approximately 1,006 hectares (ha) (2,488 acres (ac)) in Alabama, Georgia, Indiana, Kentucky, and Tennessee fall within the boundaries of the critical habitat designations.

DATES: This rule becomes effective on September 25, 2014.

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