



## SMG Reg Watch

December 2012 / 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](mailto:scottr.smith@smithmanage.com).

### QUESTIONS, COMMENTS, ADDITIONAL INFORMATION

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### Scott's Thoughts

The focus of Kentucky's Energy & Environmental Cabinet at this time appears to be water quality issues. There are two areas of the proposed regulations that remain contentious. The first is selenium. Selenium is an issue that impacts the mining industry. Information has been provided by all sides regarding this issue and we will need to patient and see how this issue is finally resolved. The other issue being discussed relates to nutrients. Clarification is being sought regarding the proposed definition of "eutrophication" and how this definition is intertwined into the Surface Water Standards at 401 KAR 10:031. How our waters are deemed to be "impaired" for nutrients is an issue that is important to a broad range of people from the farm community, city waste water treatment plants the development community and others. Kentucky's nutrient standard is not numerical. It is a descriptive standard and as a result the way it is defined is important so that there is a consistent understanding of how it will be implemented.

### Kentucky Regulations Under Consideration January 7, 2013

The following administrative regulations were deferred to the January 7, 2013, meeting of the Subcommittee:

#### **ENERGY AND ENVIRONMENT CABINET: Department for Environmental Protection: Division of Water: Water Quality**

[401 KAR 5:055](#). This regulation establishes the scope and applicability of the KPDES Program (Amended After Comments) (Deferred from November) and identifies categories of point sources required to obtain a KPDES permit, requirements pertaining to exclusions and prohibitions, requirements for general permits, requirements for disposal into wells and into publicly-owned treatment works (POTW), and requirements for disposal by land application.

[401 KAR 5:060](#). This regulation establishes the KPDES application requirements for a permit and contains additional requirements for general and specific categories of dischargers. (Amended After Comments) (Deferred from November)

#### **Water Quality Standards**

[401 KAR 10:001](#). Definitions for 401 KAR Chapter 10. (Not Amended After Comments)(Deferred from December)

[401 KAR 10:026](#). This regulation applies the designated uses described in 401 KAR 10:031 to the surface waters of the Commonwealth. (Not Amended After Comments) (Deferred from December). It also makes all surface waters subject to the general criteria specified in 401 KAR 10:031, Section 2.

[401 KAR 10:030](#). This regulation and 401 KAR 10:001, 10:026, 10:029, and 10:031 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. It establishes a methodology to implement the

antidegradation policy contained in 401 KAR 10:029 by establishing procedures to control water pollution in waters affected by that policy. (Not Amended After Comments) (Deferred from December).

[401 KAR 10:031](#). This regulation and 401 KAR 10:001, 10:026, 10:029, and 10:030 establish procedures to protect the surface waters of the Commonwealth, and thus protect water resources. This regulation establishes water quality standards that consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses. These water quality standards are minimum requirements that apply to all surface waters in the Commonwealth of Kentucky in order to maintain and protect them for designated uses. These water quality standards are subject to periodic review and revision in accordance with the Clean Water Act, 33 U.S.C. 1251-1387, 40 C.F.R. 131, and KRS Chapter 224. (Amended After Comments) (Deferred from December).

#### **Federal Regulation Review**

##### **EPA, Stormwater Regulations:**

[Revisions to Stormwater Regulations To Clarify That an NPDES Permit Is Not Required for Stormwater Discharges From Logging Roads](#)

**Final Rule:** The EPA is revising its Phase I stormwater regulations to clarify that stormwater discharges from logging roads do not constitute stormwater discharges associated with industrial activity and that a National Pollutant Discharge Elimination System (NPDES) permit is not required for these stormwater discharges.

**DATES:** This final rule is effective on January 7, 2013.

##### **EPA, Reconsideration of Certain New Source and Startup/Shutdown Issues:**

[Reconsideration of Certain New Source and Startup/Shutdown Issues: National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-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.](#)

**Proposed Rule:** The EPA is announcing that the period for providing public comments on the November 30, 2012, proposed “Reconsideration of Certain New Source and Startup/Shutdown Issues: National Emission Standards for Hazardous Air Pollutants from Coal and Oil-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” is being extended by 7 days.

**DATES:** The public comment period for the proposed rule published November 30, 2012 (77 FR 71323), is extended by 7 days to January 7, 2013.

[EPA, Water Quality Standards for the State of Florida’s Estuaries, Coastal Waters, and South Florida Inland Flowing Waters](#)

**Proposed rule:** The U.S. Environmental Protection Agency (EPA or Agency) is proposing numeric water quality criteria to protect ecological systems, aquatic life, and human health from nitrogen and phosphorus pollution in estuaries and coastal waters within the State of Florida not covered by EPA-approved State rulemaking, and south Florida inland flowing waters. These proposed criteria apply to Florida waters that are designated as Class I, Class II, or Class III waters and they are intended to protect these designated uses as well as implement for the purposes of the Clean Water Act the State’s narrative nutrient provision at Subsection 62–302.530(47)(b), Florida Administrative Code (F.A.C.), which provides that “[i]n no case shall nutrient concentrations of a body of water be altered so as to cause an imbalance in natural populations of aquatic flora or fauna.”

**DATES:** Comments must be received on or before February 19, 2013. Because of EPA’s obligation to sign a notice of final rulemaking on or before

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September 30, 2013 under Consent Decree, the Agency regrets that it will be unable to grant any requests to extend this deadline.

**EPA, [Lead; Renovation, Repair, and Painting Program for Public and Commercial Buildings; Request for Information and Advance Notice of Public Meeting](#)**

**Request for information and advance notice of public meeting:** In 2010, EPA issued an advance notice of proposed rulemaking (2010 ANPRM) concerning renovation, repair, and painting activities on and in public and commercial buildings. EPA is in the process of determining whether these activities create lead-based paint hazards, and, for those that do, developing certification, training, and work practice requirements as directed by the Toxic Substances Control Act (TSCA). This document opens a comment period to allow for additional data and other information to be submitted by the public and interested stakeholders. This document also provides advance notice of EPA's plan to hold a public meeting on June 26, 2013.

**DATES:** Comments must be received on or before April 1, 2013.

**Environmental Groups File Petition seeking Cleaner Air.** On December 19, 2012, a number of environmental groups filed a petition with U.S. EPA seeking, among other things: 1. A "broad deployment of ozone air quality monitors in oil and natural gas development areas;" and 2. that U.S. EPA provide communities with "tools to help reduce smog-forming pollution from oil and gas development by issuing control technology guidelines ("CTGs") for oil and gas equipment." You can find a copy of the petition [here](#).

**EPA finalizes clean air standards for industrial boilers, and certain incinerators, and non-hazardous secondary materials definition.** December 20, 2012 – EPA issued final changes to Clean Air Act standards for major and area source boilers and commercial/industrial solid waste incinerators. These adjusted standards will

achieve extensive public health protections by reducing toxic air pollution, while increasing the rule's flexibility and addressing concerns raised by industry and labor groups. As of January 8, 2013, these rules have not yet been published in the Federal Register, but a non-official version of these rules can be found [here](#).

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