



SMG Reg Watch

February 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 carbon dioxide issue was what was being widely touted by the media and regulatory publications in February. The issue was a feature in the President's State of The Union address and EPA's publication of their draft performance standards for GHG emissions for new stationary sources. States are scrambling to determine how to position themselves to take advantage of EPA's "flexibility language" that is contained in the regulations. State legislators are also concerned about what they have read and as a result many are considering legislation similar to Kentucky's HB 388 that will put Kentucky's legislature and Public Service Commission into the discussions. The Kentucky Bill passed a democratic controlled House of

Representatives 99-0 last week and is headed to the Senate.

On the federal legislative front Congress pass the \$956 BILLION Agriculture Act of 2014 and the President signed it. What is interesting about this bill is while it is referred to as the Farm Bill, the country's Food Stamp program makes up 80% of this legislation while the remaining 20% goes to conservation programs, energy initiatives and agriculture subsidies.

For those of you with tanks, be aware that EPA published a revision to the Spill Prevention Control and Countermeasure (SPCC) for regional inspectors. Compliance dates have passed so owners and operators need to look at the new requirements carefully. See links [here](#) and [here](#).

In February the U.S. Supreme Court heard oral arguments on February 24 regarding EPA's attempts at regulating Greenhouse gas emissions from stationary sources. If you recall, it was the Supreme Court in 2007 that determined that greenhouse gases were "air pollutants". This decision helped EPA to issue their "Endangerment Finding" and their "tailpipe rule" that limited GHG emissions from motor vehicles. Following this, EPA made the quantum leap that the regulation of GHGs from motor vehicles automatically triggered permitting requirement for stationary sources. Other GHG dominos have fallen during this period such as the "Tailoring Rule" and the recent proposed new source performance standards limiting GHGs from fossil fuel fired electric utility generating units. Therefore this Court decision will not be the last word on

GHGs from the courts. So stay tuned. 2014 will be an interesting year.

On the TSCA front, keep an eye on draft legislation that was recently issued by the House Energy and Commerce Environment and the Economy Subcommittee. The proposed Act would create a tiered information development system and allow EPA to place chemicals in commerce into two categories. See details on our attached links.

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

- [E-Manifest: What is scheduled to happen in October 2015?](#)
- [The reporting deadline for EPCRA, Air and Hazardous Waste is March 1](#)
- [EPA has declared Coal Ash as "non hazardous"](#)
- There is a new bill - [the "Secret Science Reform Act of 2014"](#)
- [EPA has Issued a Significant New Use Rule under TSCA for Five Chemicals](#)
- [Comment period for 111\(d\) to close soon](#)
- [Floyds Fork to be a Seasonal Trout Fishery](#)
- There is a new [TRI Pollution Prevention Search Tool](#)

State Regulation Review

No update. Please see our weekly legislative report for Kentucky General Assembly updates. The legislative report can be found [here](#).

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Federal Regulation Review

Air

EPA, Comment Request; Draft Supporting Materials for the Science Advisory Board Panel on the Role of Economy- Wide Modeling in U.S. EPA Analysis of Air Regulations

Notice: The Environmental Protection Agency (EPA) is evaluating the appropriate role for economy-wide modeling in informing the regulatory process. Toward that end, EPA is developing an "analytic blueprint" of materials on the technical merits and challenges of using economy-wide models to evaluate the social costs, benefits and economic impacts associated with EPA's air regulations. In addition, EPA will be seeking advice from the Science Advisory Board (SAB) on economy-wide modeling and will present materials from the analytic blueprint to inform a discussion of charge questions to a new SAB panel with expertise in economy-wide modeling. In a forthcoming **Federal Register** Notice, EPA's Science Advisory Board Staff Office will be soliciting nominations for this panel to provide advice on the use of economy-wide models to evaluate the economic effects of air regulations. In today's Notice, EPA is soliciting public comment on both the draft charge questions and draft analytic blueprint of materials that could be presented to the SAB in order to inform how to appropriately discuss the issues with the panel.

DATES: Comments must be submitted on or before April 7, 2014.



[EPA, Release of Draft Integrated Review Plan for the Primary National Ambient Air Quality Standards for Oxides of Nitrogen](#)

Notice of availability and public comment period. On or about February 10, 2014, the Environmental Protection Agency (EPA) is making available for public review the draft titled, *Integrated Review Plan for the Primary National Ambient Air Quality Standards for Nitrogen Dioxide* (draft IRP). This document contains the plans for the review of the air quality criteria for oxides of nitrogen and national ambient air quality standards (NAAQS) for nitrogen dioxide (NO₂). The primary NO₂ NAAQS provide for the protection of public health from exposure to oxides of nitrogen in ambient air.

DATES: Comments should be submitted on or before March 13, 2014.

[EPA, Approval and Promulgation of Implementation Plans; Kentucky; Stage II Requirements for the Hertz Corporation Facility at Cincinnati/ Northern Kentucky International Airport in Boone County](#)

Proposed Rule: The Environmental Protection Agency (EPA) is proposing to approve a source-specific State Implementation Plan (SIP) revision submitted to EPA by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ) on January 17, 2014, for the purpose of exempting a Hertz Corporation facility from the Clean Air Act (CAA or Act) Stage II vapor control requirements. The subject Hertz Corporation facility is currently being constructed at the Cincinnati/Northern Kentucky International Airport in Boone County, Kentucky. EPA's proposed approval of this

revision to Kentucky's SIP is based on rationale contained in the December 12, 2006 EPA policy memorandum from Stephen D. Page, entitled "*Removal of Stage II Vapor Recovery in Situations Where Widespread Use of Onboard Refueling Vapor Recovery is Demonstrated.*" This action is being proposed pursuant to the CAA.

DATES: Comments must be received on or before March 17, 2014.

[EPA, Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Recordkeeping and Reporting Requirements Regarding the Sulfur Content of Motor Vehicle Gasoline Under the Tier 2 Rule](#)

Notice: The Environmental Protection Agency has submitted an information collection request (ICR), "Recordkeeping and Reporting Requirements Regarding the Sulfur Content of Motor Vehicle Gasoline under the Tier 2 Rule" (EPA ICR No.1907.06, OMB Control No. 2060-0437) 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 April 30, 2014. Public comments were previously requested via the **Federal Register** (78FR 72675) on December 3, 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

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of information unless it displays a currently valid OMB control number.

DATES: Additional comments may be submitted on or before March 21, 2014.

EPA, [Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2012](#)

Notice of document availability and request for comments. The Draft Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990–2012 is available for public review. Annual U.S. emissions for the period of time from 1990 through 2012 are summarized and presented by source category and sector. The inventory contains estimates of carbon dioxide (CO₂), methane (CH₄), nitrous oxide (N₂O), hydrofluorocarbons (HFC), perfluorocarbons (PFC), and sulfur hexafluoride (SF₆) 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: 1990–2012 is the latest in a series of annual U.S. submissions to the Secretariat of the UNFCCC. EPA requests recommendations for improving the overall quality of the inventory report to be finalized in April 2014, as well as subsequent inventory reports.

DATES: To ensure your comments are considered for the final version of the document, please submit your comments by

March 26, 2014. However, comments received after that date will still be welcomed and considered for the next edition of this report.

EPA, [Standards of Performance for Greenhouse Gas Emissions From New Stationary Sources: Electric Utility Generating Units](#)

Notice of Data Availability (NODA). The EPA is issuing a NODA in support of the proposed rule titled “Standards of Performance for Greenhouse Gas Emissions From New Stationary Sources: Electric Utility Generating Units” that was published on January 8, 2014. Through this NODA and the technical support document it references, the EPA solicits comment on its interpretation of the provisions in the Energy Policy Act of 2005, including the federal tax credits contained in that Act, which limit the EPA’s authority to rely on information from facilities that received assistance under that Act. The EPA believes those provisions do not alter the EPA’s determination in the proposed rule that the best system of emission reduction for new fossil fuel-fired boiler and integrated gasification combined cycle electric utility generating units is partial carbon capture and sequestration.

DATES: Comments must be received on or before Monday, March 10, 2014.

WATER

EPA, [Notice of Availability of EPA Documents Regarding Implementation of the Safe Drinking Water Act’s Underground Injection Control Program Existing Requirements for Oil and Gas Hydraulic Fracturing Activities Using Diesel Fuels](#)

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Notice: The U.S. Environmental Protection Agency (EPA) is releasing an interpretive memorandum and technical recommendations for implementing the Underground Injection Control (UIC) Program Class II requirements under the Safe Drinking Water Act, as amended by the Energy Policy Act in 2005, for oil and gas hydraulic fracturing (HF) activities using diesel fuels. The EPA is providing these documents to alleviate uncertainty regarding the applicability of UIC Class II permitting requirements and the agency's interpretation of the term "diesel fuels" in the statute. A key component of the nation's energy future is the safe, responsible development of oil and gas resources. If produced responsibly, expanded use of natural gas in lieu of other fossil fuels has the potential to improve air quality, stabilize energy prices, and provide greater certainty about future energy reserves.

EPA, [National Primary Drinking Water Regulations: Minor Corrections to the Revisions to the Total Coliform Rule](#)

Proposed rule: In this action, the Environmental Protection Agency (EPA) is proposing minor corrections to the final Revisions to the Total Coliform Rule (RTCR), as authorized under the Safe Drinking Water Act, to correct typographical errors in sections relating to recordkeeping and State primacy requirements, which could affect implementation and enforcement of the RTCR if they were left uncorrected. This proposed action also includes other edits to the final rule language that are intended to improve the understanding of the rule and avoid confusion. This proposed action does not impose new requirements; rather it

clarifies what must be included in States' primacy applications related to this rule and the specific records water systems must keep. In the "Rules and Regulations" section of this **Federal Register**, EPA is making these minor corrections and edits to the final RTCR as a direct final rule without a prior proposed rule. If we receive no adverse comment, EPA will not take further action on this proposed rule.

DATES: Written comments must be received by March 28, 2014.

EPA, [National Primary Drinking Water Regulations: Minor Corrections to the Revisions to the Total Coliform Rule](#)

Direct final rule. In this action, the Environmental Protection Agency (EPA) is making minor corrections to the final Revisions to the Total Coliform Rule (RTCR), as authorized under the Safe Drinking Water Act, to correct typographical errors in sections relating to recordkeeping and State primacy requirements, which could affect implementation and enforcement of the RTCR if they were left uncorrected. This action also includes other edits to the final rule language that are intended to improve the understanding of the rule and avoid confusion. This action does not impose new requirements; rather it clarifies what must be included in States' primacy applications related to this rule and the specific records water systems must keep.

DATES: This rule is effective on April 28, 2014 without further notice, unless EPA receives adverse comment by March 28, 2014. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take

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effect. The incorporation by reference of certain material listed in the rule was approved by the Director of the Federal Register as of April 15, 2013.

WASTE

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

Notice of data availability and request for comment. This Notice of Data Availability (NODA) announces and invites comment on information assembled by the Environmental Protection Agency (EPA or the Agency), and solicits additional information regarding the hazardous waste management practices of establishments in the retail sector (e.g., stores). The NODA also invites comment on specific issues and suggested questions that the retail industry has raised about challenges they face in complying with the Resource Conservation and Recovery Act (RCRA) hazardous waste policies, guidances and regulations. This NODA meets the Agency's commitment to solicit public comment on issues associated with the retail sector under Executive Order 13563: Improving Regulation and Regulatory Review to make regulatory programs more effective or less burdensome in achieving regulatory objectives.

DATES: Comments must be received by April 15, 2014.

OTHER

EPA, Proposed Significant New Use Rule on Certain Chemical Substances

Proposed Rule: EPA is proposing significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for three chemical substances which were the subject of premanufacture notices (PMNs). This action would require persons who intend to manufacture (including import) or process any of the chemical substances for an activity that is designated as a significant new use by this proposed rule to notify EPA at least 90 days before commencing that activity. The required notification would provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit the activity before it occurs.

DATES: Comments must be received on or before April 11, 2014.

EPA, Significant New Use Rules on Certain Chemical Substances

Direct Final Rule: EPA is promulgating significant new use rules (SNURs) under the Toxic Substances Control Act (TSCA) for 35 chemical substances which were the subject of premanufacture notices (PMNs). Fourteen of these chemical substances are subject to TSCA section 5(e) consent orders issued by EPA. This action requires persons who intend to manufacture (including import) or process any of these 35 chemical substances for an activity that is designated as a significant new use by this rule to notify EPA at least 90 days before commencing that activity. The required notification will provide EPA with the opportunity to evaluate the intended use and, if necessary, to prohibit or limit that activity before it occurs.

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DATES: This rule is effective on April 14, 2014. For purposes of judicial review, this rule shall be promulgated at 1 p.m. (e.s.t.) on February 26, 2014. Written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs must be received on or before March 14, 2014 (see Unit VI. Of the **SUPPLEMENTARY INFORMATION**). If EPA receives written adverse or critical comments, or notice of intent to submit adverse or critical comments, on one or more of these SNURs before March 14, 2014, EPA will withdraw the relevant sections of this direct final rule before its effective date. For additional information on related reporting requirement dates, see Units I.A., VI., and VII. of the **SUPPLEMENTARY INFORMATION**.

EPA, [Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Regulation of Fuels and Fuel Additives: 2011 Renewable Fuel Standards—Petition for International Aggregate Compliance Approach](#)

Notice: The Environmental Protection Agency has submitted an information collection request (ICR), “Regulation of Fuels and Fuel Additives: 2011 Renewable Fuel Standards—Petition for International Aggregate Compliance Approach” (EPA ICR No. 2398.03, OMB Control No. 2060–0655) 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 February 28, 2014. Public comments were previously requested via the **Federal Register** (78 FR 30428) on December 20, 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 March 31, 2014.

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