



SMG Reg Watch

February 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

Kentucky's Energy and Environmental Cabinet continues to move their proposed Surface Water Quality Standards forward. A number of meetings were held in February regarding a new selenium standard. Selenium has been framed as a mining issue but it has the potential to adversely impact other entities such as sewer discharges, construction and development sites, CAFOs, etc. Take a look at your vitamin bottle. You even take this element. KDOW has done a good job reviewing this issue and has come up with what appears to be a workable solution to address this. It's a combination of water quality work and fish tissue analysis when needed. More discussion is needed on the nutrient front and that should occur soon. Stay tuned.

The National Emission Standard for HAPs for areas sources-industrial, commercial and institutional boilers became effective on February 1, 2013. This rule will have significant impacts on a broad range of industries. We'll try

to get some idea of Kentucky's schedule for implementation as soon as we can.

The Commercial and Industrial Solid Waste Incineration rule needs to be carefully reviewed especially if you want to burn alternative fuels. EPA has given us a very slippery slope to try to work with here. Careful consideration is required.

EPA's Draft Climate Change Adaptation Plan sounds like an "interesting" read. EPA's propensity to push rules through administrative actions, this looks like it has the potential to be a building block to their climate change agenda.

Kentucky's SIP has been approved by EPA relating to the 1997 and 2006 24 hour fine particulate matter (PM2.5) National Ambient Air Quality Standards.

The following administrative regulations have been reviewed by the Administrative Regulation Review Subcommittee and have been referred to an appropriate jurisdictional committee for a second review:

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

[401 KAR 10:001](#). Definitions for 401 KAR Chapter 10.

[401 KAR 10:026](#). This regulation applies the designated uses described in 401 KAR 10:031 to the surface waters of the Commonwealth. It also makes all surface waters subject to the general criteria specified in 401 KAR 10:031, Section 2.

Federal Regulation Review

EPA, [National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers.](#)

Final Rule: In this action, the EPA is taking final action on reconsideration of certain issues related to the emission standards to control hazardous air pollutants from new and existing industrial, commercial and institutional boilers at area sources which were issued under section 112 of the Clean Air Act. As part of this action, the EPA is amending certain compliance dates for the standard and making technical corrections to the final rule to clarify definitions, references, applicability and compliance issues raised by petitioners and other stakeholders affected by the rule. The EPA today is taking final action on the proposed reconsideration.

DATES: This final rule is effective on February 1, 2013. The incorporation by reference of certain publications listed in this final rule were approved by the Director of the Federal Register as of February 1, 2013.

EPA, [Method for the Determination of Lead in Total Suspended Particulate Matter](#)

Proposed Rule: Data used for comparison with the lead (Pb) national ambient air quality standards (NAAQS), must be collected using either a Federal Reference Method (FRM) or a Federal Equivalent Method (FEM) as defined in the Code of Federal Regulations (CFR). The EPA is proposing to establish a new FRM for measuring Pb in total suspended particulate matter (TSP) collected from ambient air. The proposed method is intended for use by analytical laboratories performing the analysis of Pb in TSP to support data collection for the Pb NAAQS. The EPA is also proposing to make the existing FRM for Pb a new FEM, and retain currently designated FEMs. This proposed action avoids any disruption to existing Pb monitoring networks and data collection and

would also not affect the FRM for TSP sample collection (High-Volume Method).

DATES: Comments must be received on or before March 7, 2013

EPA, [Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Willingness To Pay Survey for Chesapeake Bay Total Maximum Daily Load: Instrument, Pre-Test, and Implementation.](#)

Notice: The Environmental Protection Agency has submitted an information collection request (ICR), "Willingness to Pay Survey for Chesapeake Bay Total Maximum Daily Load: Instrument, Pretest, and Implementation" (EPA ICR No. 2456.01, OMB Control No. 2010-NEW) 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 request for approval of a new collection. Public comments were previously requested via the **Federal Register** (77 FR 31006) on May 24, 2012 during a 60-day comment period, which was later extended for an additional 30 days (77 FR 43822). This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given in the notice, 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 11, 2013.

EPA, [Regulation of Fuels and Fuel Additives: 2013 Renewable Fuel Standards](#)

Proposed rule: Under section 211(o) of the Clean Air Act, the Environmental Protection Agency is required to set the renewable fuel standards each November for the following year. In general the standards are designed to ensure

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that the applicable volumes of renewable fuel specified in the statute are used. However, the statute specifies that EPA is to project the volume of cellulosic biofuel production for the upcoming year and must base the cellulosic biofuel standard on that projected volume if it is less than the applicable volume set forth in the Act. EPA has proposed a projected cellulosic biofuel volume for 2013 that is below the applicable volume specified in the Act. EPA is proposing that the applicable volumes of advanced biofuel and total renewable fuel would remain at the statutory levels for 2013. Finally, today's action also proposes annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and renewable fuels that would apply to all gasoline and diesel produced or imported in year 2013.

DATES: Comments must be received on or before March 25, 2013. A request for a public hearing must be received by February 14, 2013.

[EPA, Commercial and Industrial Solid Waste Incineration Units: Reconsideration and Final Amendments; Non-Hazardous Secondary Materials That Are Solid Waste.](#)

Final rule: This action sets forth the EPA's final decision on the issues for which it granted reconsideration in December 2011, which pertain to certain aspects of the March 21, 2011, final rule titled "Standards of Performance for New Stationary Sources and Emissions Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units" (CISWI rule). This action also includes EPA's final decision to deny the requests for reconsideration with respect to all issues raised in the petitions for reconsideration of the final commercial and industrial solid waste incineration rule for which we did not grant reconsideration. Among other things, this final action establishes effective dates for the standards and makes technical corrections to the final rule to clarify definitions, references, applicability and compliance issues. In addition,

the EPA is issuing final amendments to the regulations that were codified by the Non-Hazardous Secondary Materials rule (NHSM rule). Originally promulgated on March 21, 2011, the non-hazardous secondary materials rule provides the standards and procedures for identifying whether non-hazardous secondary materials are solid waste under the Resource Conservation and Recovery Act when used as fuels or ingredients in combustion units. The purpose of these amendments is to clarify several provisions in order to implement the non-hazardous secondary materials rule as the agency originally intended.

DATES: The May 18, 2011 (76 FR 28662), delay of the effective date amending subparts CCCC and DDDD at 76 FR 15703 (March 21, 2011) is lifted February 7, 2013. The amendments in this rule to 40 CFR part 60, subpart DDDD, are effective February 7, 2013, and to 40 CFR part 60, subpart CCCC, are effective August 7, 2013. The amendments in this rule to 40 CFR part 241 are effective April 8, 2013. The incorporation by reference of certain publications listed in that rule is effective February 7, 2013.

[EPA, Notice of Availability for Public Review and Comment: Draft EPA Climate Change Adaptation Plan](#)

Notice: Scientific evidence demonstrates that the climate is changing at an increasingly rapid rate, outside the range to which society has adapted in the past. Climate change can pose significant challenges to the EPA's ability to fulfill its mission. The U.S. Environmental Protection Agency is committed to identifying and responding to the challenges that a changing climate poses to human health and the environment. It is essential; therefore, that the EPA adapt to climate change in order to continue fulfilling its statutory, regulatory and programmatic requirements, chief among these protection of human health and the environment.

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Adaptation will involve anticipating and planning for changes in climate and incorporating considerations of climate change into many of the Agency's programs, policies, rules and operations to ensure they are effective under changing climatic conditions. Adaptation also necessitates close coordination between EPA and its many partners and stakeholders. EPA and other Federal Agencies and Departments have developed draft Agency Climate Change Adaptation Plans in response to the President's October 2009 Executive Order (E.O. 13514—*"Federal Leadership in Environmental, Energy, and Economic Performance"*) and the March, 2011 *Implementing Instructions to all Federal Department and Agencies*. EPA announced the availability of a public review draft of its Agency *Plan*. The draft *Plan* will be available for a 60-day public review.

DATES: The public should respond to the EPA with comment via the public docket no later than April 9, 2013. Only comments received by the deadline can be considered by the Agency in finalizing its plan.

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

Final rule: The Environmental Protection Agency (EPA or the Agency) is finalizing revisions to the 1989 Total Coliform Rule (TCR). The Revised Total Coliform Rule (RTCR) offers a meaningful opportunity for greater public health protection beyond the 1989 TCR. Under the RTCR there is no longer a monthly maximum contaminant level (MCL) violation for multiple total coliform detections. Instead, the revisions require systems that have an indication of coliform contamination in the distribution system to assess the problem and take corrective action that may reduce cases of illnesses and deaths due to potential fecal contamination and waterborne pathogen exposure, including a requirement to notify the

public regarding certain types of violations. This final rule also updates provisions in other rules that reference analytical methods and other requirements in the 1989 TCR (e.g., Public Notification and Ground Water Rules). These revisions are in accordance with the 1996 Safe Drinking Water Act (SDWA) Amendments, which require EPA to review and revise, as appropriate, each national primary drinking water regulation no less often than every six years. These revisions also conform with the SDWA provision that requires any revision to "maintain, or provide for greater, protection of the health of persons." As with the 1989 TCR, the RTCR applies to all public water systems.

DATES: This final rule is effective on April 15, 2013. For judicial purposes, this final rule is promulgated as of February 13, 2013. The compliance date for the rule requirements is April 1, 2016. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register (FR) as of April 15, 2013.

EPA, [Air Quality: Revision to Definition of Volatile Organic Compounds—Exclusion of *trans* 1-chloro-3,3,3-trifluoroprop-1-ene \[Solstice™ 1233zd\(E\)\]](#)

Proposed rule: The EPA is proposing to revise the definition of volatile organic compounds (VOCs) for purposes of preparing state implementation plans (SIPs) to attain the national ambient air quality standards for ozone under title I of the Clean Air Act (CAA). This proposed revision would add *trans* 1-chloro-3,3,3-trifluoroprop-1-ene (also known as Solstice™ 1233zd(E)) to the list of compounds excluded from the definition of VOCs on the basis that this compound makes a negligible contribution to tropospheric ozone formation. In the "Rules and Regulations" section of this **Federal Register**, EPA is making these same amendments as a direct final rule without a prior proposed rule. If EPA receive no adverse

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comment, EPA will not take further action on this proposed rule.

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

EPA, [Greenhouse Gas Reporting Rule: Revision to Best Available Monitoring Method Request Submission Deadline for Petroleum and Natural Gas Systems Source Category](#)

Proposed Rule: The EPA is proposing to revise the deadline by which owners or operators of facilities subject to the petroleum and natural gas systems source category of the Greenhouse Gas Reporting Rule must submit requests for use of best available monitoring methods to the Administrator. This proposed revision does not change any other requirements for owners or operators as outlined in the best available monitoring method rule provisions.

DATES: Written comments must be received on or before March 21, 2013.

EPA, [Proposed Information Collection Request; Comment Request; Renewable Fuels Standard \(RFS2\) Program](#)

Notice: The Environmental Protection Agency is planning to submit an information collection request (ICR), "Renewable Fuels Standard (RFS2) Program" (EPA ICR No. 2333.03, OMB Control No. 2060-0640) 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 "RENEWAL" of the ICR, which is currently approved through June 31, 2013. 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 April 22, 2013.

EPA, [Approval and Promulgation of Implementation Plans; Region 4 States; 110\(a\)\(2\)\(D\)\(i\)\(II\) Infrastructure Requirement for the 1997 and 2006 Fine Particulate Matter National Ambient Air Quality Standards](#)

Proposed rule: EPA is proposing to approve submissions from Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee for inclusion into each state's implementation plan. This proposal pertains to the infrastructure state implementation plans (SIPs) for these States as they relate to certain Clean Air Act (CAA or Act) requirements for the 1997 annual and 2006 24-hour fine particulate matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA. These plans are commonly referred to as an "infrastructure" SIPs. Specifically, EPA is proposing to approve the submissions for Alabama, Georgia, Kentucky, Mississippi, North Carolina, South Carolina and Tennessee that relate to the infrastructure SIP requirement to protect visibility in another state. All other applicable infrastructure requirements for the 1997 annual and 2006 24-hour PM_{2.5} NAAQS associated with these States are being addressed in separate rulemakings.

DATES: Written comments must be received on or before March 22, 2013.

EPA, [Energy Efficiency Program for Commercial and Industrial Equipment: Public Meeting and Availability of the Framework Document for Commercial and Industrial Fans and Blowers](#)

Extension of public comment period: The comment period for the notice of public meeting and availability of the Framework Document

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pertaining to the development of energy conservation standards for commercial and industrial fan and blower equipment published on February 1, 2013, is extended to May 2, 2013.

DATES: The comment period for the notice of public meeting and availability of the Framework Document relating to commercial and industrial fan and blower equipment is extended to May 2, 2013.

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