

**February 2011
Federal & Kentucky Regulatory Report
Smith Management Group-Government Solutions**

SMG Reg Watch

Prepared by
Scott R. Smith

scottr.smith@smithmanage.com, 859-231-8936 x 116

Scott's Thoughts

Below is a summary of regulations that I am currently tracking from the Federal Register in January and the State Administrative Regulations published February 1. They primarily address energy, environmental, health, safety, educational issues relating to sustainability and public utilities.

Kentucky's Division of Water published a proposed regulation relating to "antidegradation" of the Commonwealth's waterways. This has been a contentious issue over the years. The proposed regulation addresses EPA's concerns expressed in a November 2010 letter, over Kentucky's antidegradation program. This regulation will impact anyone who has or may need a KPDES permit. Public comments on the proposed regulation are due February 28.

OSHA has been busy making the US a safer place. They've issued a final rule regarding handling of complaints under the employee protection provision of six environmental statutes and Section 211 of the Energy Reorganization Act of 1974. OSHA appears to be gathering information and collecting comments on recording and reporting occupational injuries and illnesses and information on the OSHA-7 Form (Notice of Alleged Safety & Health Hazards).

EPA efforts have taken to the skies with air emissions. EPA has taken away Jefferson County's ability to issue air permits to sources of greenhouse gas emissions. The county will continue to review and approve the standard portion of the air application while EPA will review and approve the GHG portion of the application and permit. Hopefully this divided responsibility will be resolved soon. Of particular interest to Kentucky is that EPA is proposing to disapprove the portion of Kentucky's September 8, 2009, submission which was intended to meet the requirement to address interstate transport for the 2006 24-hour PM2.5 NAAQS.

Two EPA documents have been released that appear to have good information. "Biofuels and the Environment: First Triennial Report to Congress" and "Review of the Secondary National Ambient Air Quality Standards of Oxides of Nitrogen and Sulfur".

Notable final rules have been issued on gasoline distribution bulk terminals and HAP standards for Portland Cement Manufacturing.

Proposed rules that are available for public comment include: OSHA-recording and reporting occupational injuries and illnesses; EPA Comment Period extension on Mandatory Reporting of greenhouse gases and EPA-Reporting and recordkeeping for asbestos abatement worker protection.

EPA has a Call For Information regarding emission estimating methodologies for animal feeding operations.

Please note that the regulations are grouped by action type: final rules, proposed rules, comments etc....

This is not an all encompassing list of all regulations being considered at the state or federal level. Please 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?

Send this to a colleague and tell them to contact us a scottr.smith@smithmanage.com if they want to receive notice when these postings are updated.

Questions, Comments, Additional Information

Scott R. Smith, scottr.smith@smithmanage.com

Kentucky Regulations Under Consideration as of January 14, 2011

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

[401 KAR 10:030](#). Antidegradation policy implementation methodology.

AS AMENDED: Department of Housing, Buildings and Construction: Division of Plumbing: Plumbing

[815 KAR 20:034](#). Requirements for approval of continuing education courses and providers.

Federal Regulation Review

FINAL RULES

ENVIRONMENTAL PROTECTION AGENCY 40 CFR Part 52 Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Federal Implementation Plan for Jefferson County, KY ACTION: Final rule. January 14, 2011 (Volume 76, Number 10 Page 2581-2589)

EPA is establishing a federal implementation plan (FIP) to apply in Jefferson County, Kentucky because the Louisville Metro Air Pollution Control District (LMAPCD), through the Commonwealth of Kentucky, has not submitted by its established deadline of January 1, 2011, a state implementation plan (SIP) revision to apply their Clean Air Act (CAA or Act) Prevention of Significant Deterioration (PSD) program to sources of greenhouse gases (GHGs).

DATES: This action is effective on January 14, 2011.

ENVIRONMENTAL PROTECTION AGENCY 40 CFR Part 52 Action To Ensure Authority To Issue Permits Under the Prevention of Significant Deterioration Program to Sources of Greenhouse Gas Emissions: Finding of Failure To Submit State Implementation Plan Revision Required of Louisville Metro Air Pollution Control District for Jefferson County, KY. ACTION: Final rule. January 14, 2011 (Volume 76, Number 10 Page 2591-2596)

The EPA is making a finding that the Louisville Metro Air Pollution Control District (LMAPCD) has failed to submit a revision to its EPA-approved state implementation plan (SIP) for Jefferson County, Kentucky, to satisfy requirements of the Clean Air Act (CAA) to apply Prevention of Significant Deterioration (PSD) requirements to greenhouse gas (GHG)-emitting sources.

DATES: This action is effective on January 14, 2011.

ENVIRONMENTAL PROTECTION AGENCY 40 CFR Parts 60 and 63 National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants ACTION: Direct Final rule; amendments. January 18, 2011 (Volume 76, Number 1 Page 2832-2837)

The EPA is taking direct final action on amendments to the National Emissions Standards for Hazardous Air Pollutants (NESHAP) from the Portland Cement Manufacturing Industry and Standards of Performance (NSPS) for Portland Cement Plants. The final rules were published on September 9, 2010. This direct final action amends certain regulatory text to clarify compliance dates and clarifies that the previously issued emission limits that were changed in the September 9, 2010, action remain in effect until sources are required to comply with the revised limits. We are also correcting two minor typographical errors in the regulatory text to the September 9, 2010 action.

DATES: The direct final rule is effective on March 21, 2011, without further notice, unless EPA receives significant adverse written comment by February 17, 2011, or if a public hearing is requested by February 2, 2011. If significant adverse comments are received, EPA will publish a timely withdrawal in the Federal Register clarifying which provisions will become effective and which provisions are being withdrawn due to adverse comment.

DEPARTMENT OF LABOR Occupational Safety and Health Administration 29 CFR Part 24 Procedures for the Handling of Retaliation Complaints Under the Employee Protection Provisions of Six Environmental Statutes and Section 211 of the Energy Reorganization Act of 1974, as Amended AGENCY: Occupational Safety and Health Administration, Labor. ACTION: Final rule. January 18, 2011 (Volume 76, Number 11 Page 2808-2826)

This document provides the final text of regulations governing the employee protection (or "whistleblower") provisions of Section 211 of the Energy Reorganization Act of 1974, as amended, ("ERA"), implementing the statutory changes enacted into law on August 8, 2005, as part of the Energy Policy Act of 2005. The regulations also finalize changes to the procedures for handling retaliation complaints under Section 211 of the ERA and the six environmental whistleblower statutes that were designed to make them as consistent as possible with the more recently promulgated procedures for handling retaliation complaints under other whistleblower provisions administered by the Occupational Safety and Health Administration (OSHA).

DATES: This final rule is effective on January 18, 2011.

ENVIRONMENTAL PROTECTION AGENCY. 40 CFR Part 60. Standards of Performance for Fossil-Fuel-Fired, Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units ACTION: Direct final rule. January 20, 2011 (Volume 76, Number 13 Page 3517-3524)

EPA is taking direct final action to amend the new source performance standards for electric utility steam generating units and industrial-commercial-institutional steam generating units. This action amends the testing requirements for owners/operators of steam generating units that elect to install particulate matter continuous emission monitoring systems. It also amends the opacity monitoring requirements for owners/operators of affected facilities subject to an opacity standard that are exempt from the requirement to install a continuous opacity monitoring system. In addition, this action corrects several editorial errors identified from previous rulemakings.

DATES: This final rule is effective on March 21, 2011 without further notice, unless EPA receives adverse comment by February 22, 2011. If EPA receives adverse comment, we will publish a timely withdrawal in the Federal Register informing the public that some or all of the amendments to the affected subparts will not take effect.

ENVIRONMENTAL PROTECTION AGENCY. 40 CFR Parts 9 and 63. National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities. ACTION: Final rule; amendments. January 24, 2011 (Volume 76, Number 15 Page 4155-4185)

This action promulgates amendments to the National Emission Standards for Hazardous Air Pollutants for Source Categories: Gasoline Distribution Bulk Terminals, Bulk Plants, and Pipeline Facilities; and Gasoline Dispensing Facilities, which EPA promulgated on January 10, 2008, and amended on March 7, 2008. In this action, EPA is finalizing amendments and clarifications to certain definitions and applicability provisions of the final rules in response to some of the issues raised in the petitions for reconsideration. In addition, several other compliance-related questions posed by various individual stakeholders and State and local agency representatives are addressed in this action. We are also denying reconsideration on one issue raised in a petition for reconsideration received by the Agency on the final rules.

DATES: These final rules are effective on January 24, 2011. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of January 24, 2011.

PROPOSED RULE

ENVIRONMENTAL PROTECTION AGENCY. 40 CFR Parts 49, 60, 63, 75, 86, 89, 92, 94, 761, and 1065. Incorporation of Revised ASTM Standards That Provide Flexibility in the Use of Alternatives to Mercury-Containing Thermometers; Solicitation of Public Comment on the Required Use of Mercury-Containing Thermometers in EPA Regulations. ACTION: Proposed rule. January 12, 2011 (Volume 76, Number 8 2056-2066)

EPA is proposing to incorporate the most recent versions of the American Society for Testing and Materials (ASTM) International standards (ASTM standards) into EPA regulations that provide flexibility to use alternatives to mercury-containing industrial thermometers.

DATES: Comments must be received on or before March 14, 2011

ENVIRONMENTAL PROTECTION AGENCY 40 CFR Parts 60 and 63 National Emission Standards for Hazardous Air Pollutants From the Portland Cement Manufacturing Industry and Standards of Performance for Portland Cement Plants ACTION: Proposed rule. January 18, 2011 (Volume 76, Number 11Page 2860-2863)

The EPA is taking action on amendments to the National Emissions Standards for Hazardous Air Pollutants (NESHAP) and Standards of Performance (NSPS) for Portland Cement Plants. The final rules were published on September 9, 2010. This action amends certain text in the final rules to clarify compliance dates and to restore the previously issued emission limits that we changed in the September 9, 2010 action. We are also correcting two minor typographical errors.

DATES: Comments must be received on or before February 17, 2011. If any one contacts EPA by February 2, 2011 requesting to speak at a public hearing, EPA will hold a public hearing on February 7, 2011.

ENVIRONMENTAL PROTECTION AGENCY. 40 CFR Part 60 Standards of Performance for Fossil-Fuel-Fired, Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units. ACTION: Proposed rule. January 20, 2011 (Volume 76, Number 13 Page 3587-3590)

EPA is proposing to amend the new source performance standards for electric utility steam generating units and industrial-commercial-institutional steam generating units. This action would amend the testing requirements for owners/operators of steam generating units that elect to

install particulate matter continuous emission monitoring systems. It would also amend the opacity monitoring requirements for owners/operators of affected facilities subject to an opacity standard that are exempt from the requirement to install a continuous opacity monitoring system. In addition, this action would correct several editorial errors identified from previous rulemakings.

DATES: Written comments must be received on or before February 22, 2011, unless a public hearing is requested by January 31, 2011. If a timely hearing request is submitted, the public hearing will be held on February 4, 2011 and we must receive written comments on or before March 7, 2011.

ENVIRONMENTAL PROTECTION AGENCY. 40 CFR Part 52. Approval and Promulgation of Air Quality Implementation Plans; Kentucky; Disapproval of Interstate Transport Submission for the 2006 24-Hour PM_{2.5} Standard. ACTION: Proposed rule. January 26, 2011 (Volume 76, Number 17 Page 4597-4601)

On September 8, 2009, Kentucky's Energy and Environment Cabinet, through the Kentucky Division for Air Quality (KDAQ), provided a letter to EPA with certification that Kentucky's State implementation plan (SIP) meets the interstate transport requirements with regard to the 2006 24-hour particulate matter (PM_{2.5}) national ambient air quality standard (NAAQS). Specifically, the interstate transport requirements under the Clean Air Act (CAA or Act) prohibit a State's emissions from significantly contributing to nonattainment or interfering with the maintenance of the NAAQS in any other State. In this action, EPA is proposing to disapprove the portion of Kentucky's September 8, 2009, submission which was intended to meet the requirement to address interstate transport for the 2006 24-hour PM_{2.5} NAAQS.

DATES: Comments must be received on or before February 25, 2011.

COMMENTS

DEPARTMENT OF LABOR, Occupational Safety and Health Administration Standard on Powered Platforms for Building Maintenance; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements. January 7, 2011 (Volume 76, Number 5 Page 1192-1194)

Request for public comments. OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified in its Standard on Powered Platforms for Building Maintenance (29 CFR 1910.66).

DATES: Comments must be submitted (postmarked, sent, or received) by March 8, 2011.

DEPARTMENT OF LABOR Occupational Safety and Health Administration Proposed Information Collection Request Submitted for Public Comment and Recommendations; Recording and Reporting Occupational Injuries and Illnesses ACTION: Request for public comment. January 13, 2011 (Volume 76, Number 9 Page 2418-2420)

The Occupational Safety and Health Administration (OSHA) is soliciting comments concerning the proposed extension of approval for the current paperwork requirements of 29 CFR part 1904, Recording and Reporting Occupational Injuries and Illnesses. A copy of the proposed information collection request can be obtained by contacting the office listed below in the address section of this notice.

DATES: Comments must be submitted (postmarked, sent, or received) by March 14, 2011.

DEPARTMENT OF LABOR Occupational Safety and Health Administration [Docket No. OSHA-2010-0056] OSHA-7 Form ("Notice of Alleged Safety and Health Hazards"); Extension of the Office of Management and Budget's (OMB) Approval of Information

Collection (Paperwork) Requirements ACTION: Request for public comments. January 13, 2011 (Volume 76, Number 9 Page 2417-2418)

OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified in the OSHA-7 Form.

DATES: Comments must be submitted (postmarked, sent, or received) by March 14, 2011.

ENVIRONMENTAL PROTECTION AGENCY. Availability of Draft Report, Biofuels and the Environment: First Triennial Report to Congress. ACTION: Notice of peer review meeting and public comment period. January 28, 2011 (Volume 76, Number 19 Page 5154-5156)

EPA is announcing that it will convene an independent panel of experts to review the external review draft document titled, Biofuels and the Environment: The First Triennial Report to Congress (EPA/600/R-10/183A). EPA, through its Peer Review contractor, Versar, Inc., invites the public to register to attend the peer review meeting. In addition, EPA through Versar, Inc., invites the public to give oral and/or provide written comments during the meeting regarding the draft document under review. The draft document and EPA's charge to the peer reviewers are available primarily via the Internet on NCEA's home page under the Recent Additions and Publications menus at <http://www.epa.gov/ncea>. In preparing a final report, EPA will consider the comments and recommendations from the external peer review meeting and any public comments that EPA receives in accordance with this notice.

DATES: The peer review panel meeting will begin on March 14, 2011, at 9 a.m. and end at 5 p.m. The 30-day public comment period begins January 28, 2011, and ends February 28, 2011. Technical comments should be in writing and must be received by EPA by February 28, 2011.

NOTICE

ENVIRONMENTAL PROTECTION AGENCY Agency Information Collection Activities; Proposed Collection; Comment Request; Air Stationary Source Compliance and Enforcement Information ACTION: Notice. January 18, 2011 (Volume 76, Number 11 Page 2904-2905)

This document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR is scheduled to expire on July 31, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before March 21, 2011.

ENVIRONMENTAL PROTECTION AGENCY 40 CFR Part 98 Extension of Comment Period on Change to the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule; and Public Hearing and Extension of Comment Period on Call for Information on Inputs to Emission Equations Under the Mandatory Reporting of Greenhouse Gases Rule ACTION: Public hearing notice and extension of public comment periods. January 19, 2011 (Volume 76, Number 12 Page 3062-3064)

On December 27, 2010, EPA concurrently published a proposed Change to the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule and a Call for Information on Inputs to Emission Equations Under the Mandatory Reporting of Greenhouse Gases Rule. In this action, EPA is providing notice of a public hearing on the Call for Information, to be held on February 3, 2011, and extending the comment period for both actions until March 7, 2011.

DATES: Comments. This action extends the comment period for the proposed Change to the Reporting Date for Certain Data Elements Required Under the Mandatory Reporting of Greenhouse Gases Rule (75 FR 81350). Comments must be received on or before March 7, 2011. This action also extends the comment period for the Call for Information on Inputs to Emission Equations Under the Mandatory Reporting of Greenhouse Gases Rule (75 FR 81366). Comments must be received on or before March 7, 2011.

ENVIRONMENTAL PROTECTION AGENCY Release of Final Document Related to the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Sulfur. ACTION: Notice of Availability. January 26, 2011 (Volume 76, Number 17 Page 4694-4695)

The Office of Air Quality Planning and Standards (OAQPS) of EPA is announcing the availability of a document titled, Policy Assessment for the Review of the Secondary National Ambient Air Quality Standards for Oxides of Nitrogen and Sulfur (January 14, 2011 version) (Policy Assessment). The Policy Assessment contains staff analyses of the scientific bases for alternative policy options for consideration by the Agency prior to rulemaking.

DATES: This version of Policy Assessment will be available on or about January 14, 2011; a final version is expected to be released around the end of January.

ENVIRONMENTAL PROTECTION AGENCY. Agency Information Collection Activities; Proposed Collection; Comment Request; TSCA Section 402 and Section 404 Training and Certification, Accreditation and Standards for Lead-Based Paint Activities and Renovation, Repair, and Painting. ACTION: Notice. January 26, 2011 (Volume 76, Number 17 Page 4657-4659)

This document announces that EPA is planning to submit a request to renew an existing approved Information Collection Request (ICR) to the Office of Management and Budget (OMB). This ICR, entitled: "TSCA Section 402 and Section 404 Training and Certification, Accreditation and Standards for Lead-Based Paint Activities and Renovation, Repair, and Painting" and identified by EPA ICR No. 1715.13 and OMB Control No. 2070-0155, is scheduled to expire on October 31, 2011. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection.

DATES: Comments must be received on or before March 28, 2011.

ENVIRONMENTAL PROTECTION AGENCY Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Reporting and Recordkeeping for Asbestos Abatement Worker Protection; EPA ICR No. 1246.11, OMB No. 2070-0072. ACTION: Notice. January 26, 2011 (Volume 76, Number 17 Page 4655-4656)

This document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Reporting and Recordkeeping for Asbestos Abatement Worker Protection; EPA ICR No. 1246.11, OMB No. 2070-0072. The ICR, which is abstracted below, describes the nature of the information collection activity and its expected burden and costs.

DATES: Additional comments may be submitted on or before February 25, 2011.

ENVIRONMENTAL PROTECTION AGENCY. 40 CFR Parts 50, 53 and 58 Denial of the Petitions To Reconsider the Final Rule Promulgating the Primary National Ambient Air Quality Standard for Sulfur Dioxide AGENCY: Environmental Protection Agency (EPA). ACTION: Denial of petitions to reconsider. January 26, 2011 (Volume 76, Number 17 Page 4779-4800)

The Environmental Protection Agency is denying the petitions to reconsider the final revised primary national ambient air quality standard (NAAQS) for oxides of sulfur as measured by sulfur dioxide (SO₂) issued under section 109 of the Clean Air Act (CAA). The final revised SO₂ Primary NAAQS was published on June 22, 2010, and became effective on August 23, 2010. EPA has carefully reviewed all of the petitions and revisited both the rulemaking record and the Administrator's decision process underlying the final revised SO₂ Primary NAAQS in light of these petitions. EPA's analysis of the petitions reveals that the petitions have provided inadequate and generally irrelevant arguments and evidence that the underlying information supporting the final revised SO₂ Primary NAAQS is flawed, misinterpreted or inappropriately applied by EPA. The petitioners' arguments fail to meet the criteria for reconsideration under the Clean Air Act.

DATES: This denial is effective January 14, 2011 .

CALL FOR INFORMATION

ENVIRONMENTAL PROTECTION AGENCY 40 CFR Part 60 Call for Information: Information Related to the Development of Emission-Estimating Methodologies for Animal Feeding Operations ACTION: Call for information. January 19, 2011 (Volume 76, Number 12 Page 3060-3062)

The Environmental Protection Agency is publishing this Call for Information to solicit quality-assured emissions and process data that are relevant to developing emissions-estimating methodologies for animal feeding operations. EPA may use the data to supplement the emissions and process data collected under the National Air Emission Monitoring Study for animal feeding operations.

DATES: Information must be received on or before March 7, 2011.