



SMG Reg Watch

July 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

EPA and other regulatory agencies haven't taken a summer break this year. During the July 4th Holiday, EPA, OSHA and other agencies introduced their Semiannual Regulatory Agenda. More can be read about the agendas below and on [SMG's blog](#). The link to the status of regulation development is www.reginfo.gov.

Two other issues that are not new but seem to have a renewed focus are Environmental Justice and the Endangered Species Act.

Environmental Justice has been an important topic in the Obama administration and it is not going away. Each EPA Regional Office has issued an implementation plan that is available on their websites. Region 4's Initiatives can be found [here](#). Part of the plan includes subjecting certain permits to enhanced review. Some types of permits requiring advanced review include: PSD/new source review air permits for new or modified major sources, significant underground injection well permits, industrial

NPDES discharge permits for new sources/discharges or existing sources with major modifications, and RCRA permits for combustion facilities for corrective action sites. Please note that this enhanced review process only pertains to EPA issued permits. However, states may adopt similar approaches.

The Endangered Species Act is being used by environmental groups to affect economic growth. Last time we checked there are 251 species that are candidate species for listing and 625 species have been petitioned for listing. Pay special attention to the ESA on any construction or expansion projects. Endangered species listing in a stream can cause the stream's classification to be changed to an "outstanding resource water" in Kentucky.

More on these topics and other timely national environmental issues can be found on [SMG's blog](#). Especially pertinent is my series of entries on my recent visit to Washington D.C. to meet with lawmakers and policy-makers.

On a state level, there are also several issues of importance. First, the Division of Water continues to focus upon nutrients and TMDL development for *e.coli* and fecal coliform.

Similarly, DOW is developing a TMDL distribution list to send out notifications of the activities taking place within the TMDL Section, such as public notices and approved TMDLs. You can join the distribution list by responding to the TMDL@ky.gov email with your name, affiliation and email address.

Finally, the Kentucky Division of Waste Management's Brownfields Advisory Council has distributed non-binding guidance in the interim prior to the development of a new regulation. For more information on the program, click [here](#) for an overview and [here](#) for an example of how the program really works.

State Regulation Review

The following administrative regulations are proposed new administrative regulations have been revised after public comment and Statement of Consideration. The regulations have been removed from the June 2013 Agenda of the Administrative Regulation Review Subcommittee and have been deferred to the July 2013 meeting of the Subcommittee:

ENERGY AND ENVIRONMENT CABINET:
Department for Environmental Protection:
Division of Water: Water Quality: [401 KAR 5:320](#). Wastewater Laboratory Certification Program. This administrative regulation establishes the wastewater laboratory certification program, standards for the certification of wastewater laboratories, and fees for certification and evaluation of wastewater laboratories.

The following administrative regulations were deferred to the July meeting of the Subcommittee:

ENERGY AND ENVIRONMENT CABINET:
Department for Environmental Protection:
Division of Water: Water Quality Standards: [401 KAR 10:030](#). Antidegradation policy implementation methodology. This administrative regulation 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.

Federal Regulation Review**Air**

EPA, [Agency Information Collection Activities; Proposed Collection; Comment Request; 8-Hour Ozone National Ambient Air Quality Standard Implementation Rule, EPA ICR No. 2236.04](#)

Notice: In compliance with the Paperwork Reduction Act (PRA) (44U.S.C. 3501 *et seq.*), this Federal Register document announces that the EPA is planning to submit to the Office of Management and Budget a request to renew an existing approved Information Collection Request (ICR) 2236.03—8-Hour Ozone National Ambient Air Quality Standard Implementation Rule. This ICR is scheduled to expire on July 31, 2013. Before submitting the ICR to OMB for review and approval, the EPA is soliciting comments on specific aspects of the proposed information collection as described in the notice.

DATES: Comments must be submitted on or before August 26, 2013.

EPA, [Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Automobile and Light-duty Truck Surface Coating \(Renewal\)](#)

Notice: The Environmental Protection Agency has submitted an information collection request (ICR), “NESHAP for Automobile and Light-duty Truck Surface Coating (40 CFR part 63, subpart III) (Renewal)” (EPA ICR No. 2045.05, OMB Control No. 2060–0550), to the Office of

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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, 2013. Public comments were previously requested via the **Federal Register** (77 FR 63813) on October 17, 2012 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 August 29, 2013.

[EPA, Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Renewable Fuel Standard \(RFS 2\) Program \(Renewal\)](#)

Notice: The Environmental Protection Agency has submitted an information collection request (ICR), “Renewable Fuel Standard (RFS 2) Program (Renewal)” (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.*). This is a proposed extension of the ICR, which is currently approved through July 31, 2013. Public comments were previously requested via the **Federal Register** (78 FR 11870) on February 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 August 29, 2013.

Water

[EPA, NPDES Electronic Reporting Rule](#)

Proposed rule: EPA is proposing a regulation that would require electronic reporting for current paper-based NPDES reports. This action will save time and resources for permittees, states, tribes, territories, and EPA while improving compliance and providing better protection of the Nation’s waters. The proposed Clean Water Act regulation would require permittees and regulators to use existing, available information technology to electronically report information and data related to the NPDES permit program in lieu of filing written reports. The proposal will also allow better allocation and use of limited program resources and enhance transparency and public accountability by providing regulatory agencies and the public with more timely, complete, accurate, and nationally-consistent sets of data about the NPDES program and potential sources of water pollution. The benefits of this proposed rulemaking should allow NPDES authorized programs in states, tribes, and territories to shift precious resources from data management activities to those more targeted to solving water quality and noncompliance issues. This in

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turn may contribute to increased compliance, improved water quality, and a level playing field for the regulated community. Given the large scope of this proposal, EPA commits to offer an additional opportunity for transparency and engagement by publishing a supplemental notice should we receive comments on the proposed rule that require significant changes. States, tribes, territories, permittees, and other stakeholders can review and comment on the supplemental notice. EPA plans to publish the supplemental notice within 180 days after the public comment period for this proposed rule has closed.

DATES: Comments on this proposed action must be received on or before October 28, 2013.

Other

EPA, [Community Right-to-Know; Adoption of 2012 North American Industry Classification System \(NAICS\) Codes for Toxics Release Inventory \(TRI\) Reporting](#)

Proposed Rule: North American Industry Classification System (NAICS) codes subject to reporting under the Toxics Release Inventory (TRI) to reflect the Office of Management and Budget (OMB) 2012 NAICS revision. Facilities would be required to use 2012 NAICS codes when reporting to TRI beginning with TRI reporting forms that are due on July 1, 2014, covering releases and other waste management quantities for the 2013 calendar year. In the “Rules and Regulations” section of today’s **Federal Register**, EPA is simultaneously

publishing the 2012 OMB NAICS revisions for TRI Reporting as a direct final rule without a prior proposed rule. If EPA receives no adverse comment, they will not take further action on this proposed rule. They will withdraw this proposed rule, and the direct final rule will become effective as specified in that rule. If, however, EPA does receive adverse comment in response to this proposed rule or in response to the direct final rule, then they will publish a timely withdrawal in the **Federal Register** informing the public that the direct final rule will not take effect. In that case, EPA would address all public comments in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. For further information about commenting on this rule, see the **ADDRESSES** section of this document.

DATES: Comments must be received on or before August 19, 2013.

DEPARTMENT OF COMMERCE, [Spring 2013 Semiannual Agenda of Regulations](#)

Semiannual regulatory agenda: In compliance with Executive Order 12866, entitled “Regulatory Planning and Review,” and the Regulatory Flexibility Act, as amended, the Department of Commerce (Commerce), in the spring and fall of each year, publishes in the **Federal Register** an agenda of regulations under development or review over the next 12 months. Rulemaking actions are grouped according to prerulemaking, proposed rules, final rules, long-term actions, and rulemaking actions completed since the 2012 agenda. The purpose of the agenda is to provide information

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to the public on regulations that are currently under review, being proposed, or issued by Commerce. The agenda is intended to facilitate comments and views by interested members of the public. Commerce's spring 2013 regulatory agenda includes regulatory activities that are expected to be conducted during the period April 1, 2013, through March 31, 2014.

DEPARTMENT OF ENERGY, [Semiannual Regulatory Agenda](#)

Notice of semiannual regulatory Agenda: The Department of Energy (DOE) has prepared and is making available its portion of the semiannual Unified Agenda of Federal Regulatory and Deregulatory Actions (Agenda) pursuant to Executive Order 12866, "Regulatory Planning and Review," and the Regulatory Flexibility Act.

EPA, [Spring 2013 Regulatory Agenda](#)

Semiannual regulatory flexibility agenda and semiannual regulatory agenda: The Environmental Protection Agency (EPA) publishes the semiannual regulatory agenda online (the e-Agenda) at <http://www.reginfo.gov> and at www.regulations.gov to update the public about:

- Regulations and major policies currently under development,
- Reviews of existing regulations and major policies, and
- Rules and major policymakings completed or canceled since the last agenda.

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