



SMG Reg Watch

June 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

This past month saw a flurry of varied activity from EPA. I've summarized the highlights in this newsletter.

In May, EPA promulgated [final regulations](#) that established requirements for cooling water intakes at existing power plants and industrial facilities. The new regulations apply to existing facilities that withdraw more than 2 million gallons of water per day from Waters of the U.S. and use at least 25% of that water for cooling purposes. Now, here's where it gets interesting: the facility is required to implement one of seven options intended to minimize potential adverse impacts (impingement

and entrainment). But, guess what? Facilities don't choose the option -- the permitting authority will do that for them. Upon their choice of options, the regulators must then state whether the benefits justify the costs. If there is something environmental regulators don't know anything about, it's money! So this should be interesting.

Also in May, (May 30, 2014) EPA published the "[Framework for Identifying and Evaluating Lead Based Paint Hazards from Renovation, Repair and Painting Activities in Public and Commercial Buildings](#) (P&CBs)". This regulatory approach is different that past lead paint regulations. The agency says that, "coming up with a one size fits all approach for P&CBs is inappropriate given the wide variety of different structures, room sizes and uses. EPA intends to evaluate a wide range of scenarios and consider multiple variations in the type of renovations. Using a probabilistic approach, EPA will then promulgate regulations that would apply only to the modeled scenarios showing adverse health risks.

EPA has also been busy with Clean Air Act issues. [Here](#) is a link done by the law firm Schiff Hardin. They have done an excellent job giving us the key elements of [EPA's Clean Power Plan](#) or as many refer to it as the Greenhouse Gas Emission Rule.

In addition, an interesting decision was rendered on May 30, 2014 by the U.S. Court of Appeals for the D.C. Circuit in [National Environmental Development Assoc.'s Clean Air Project v. EPA](#) (NEDA). The ruling limits the ability of EPA to apply different interpretations of the Clean Air Act regulations in different areas of the country. The specific issue dealt with the question of “adjacency” under EPA’s air regulations but could impact the Agency in other areas. It has been common practice for this EPA in order to avoid the effect of adverse court decisions to ignore those decisions. Industry should see this decision as a mechanism to challenge other region-specific practices by EPA.

EPA released a comic book justification to their climate change proposed regulations in a report called [Climate Change Indicators in the United States](#) (2014). The report details the science behind climate change and is a tool to be used to educate the public. Check it out, we all need some fictional reading during our summer vacations.

Finally, water issues continue to be at the forefront of EPA’s regulatory agenda. On March 25, 2014, EPA and the Corps of Engineers proposed a [rule](#) redefining the scope of waters protected by the Clean Water Act. Besides waters that have been historically regulated, the proposed rule includes a concept of “other waters” which

will be determined on a case by case basis that considers whether these “other waters” have a “significant nexus” to traditional waters. EPA/Corps attempt to define “significant nexus” by proposing it to mean

“...a water, including wetlands, either alone or in combination with other similarly situated waters in the regions (i.e. the watershed that drains to the nearest water identified in paragraphs (a)(1) through (3) of this section. For an effect to be significant, it must be more than speculative or insubstantial. Other waters, including wetlands, are similarly situated when they perform similar functions and are located sufficiently close together or sufficiently close to a ‘water of the United States’ so that they can be evaluated as a single landscape unit with regard to their effect on the chemical, physical or biological integrity of a water identified in paragraphs (a)(1) through (3).”

What in the world does that really mean? It sounds like, “I don’t know what it is either, but I know it when I see it.” Help America! Comments on this proposed rule are due October 20, 2014. Please get involved and provide comments and help get this idea

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either nixed or put together so that it makes sense.

In an effort to encourage government and the business/industrial sectors to focus on water availability, VOX Global and Pacific Institute published a new report "[Bridging Concern with Action: Are U.S. Companies prepared for Looming Water Challenges?](#)" Survey respondents indicated that water challenges are worsening and will affect their business more significantly in years to come. Most did not indicate any plans to expand their water risk mitigation measures in the future. Let's wake up on this issue and begin to figure out how to effectively address it.

In other news, here are SMG's blog entries of note for June. Blog entries are linked to this Reg Watch:

- [EPA's "Secret Science" Discouraged by the U.S. House of Representatives](#)
- [Harmful Algal Blooms identified in several Kentucky Lakes](#)
- [EPA and Interior Publish Semiannual Regulatory Agendas](#)
- [EPA Approves Jefferson County's Portion of the SIP for Startups and Shutdowns](#)
- [Proposed Critical Plant Habitat in Kentucky \(Short's Bladderpod\)](#)
- [2014 Brownfield Grants Issued](#)

The following are Proposed Amendments that may be discussed at the June 10, 2014 meeting of the Administrative Regulation Review Subcommittee:

LABOR CABINET: Department of Workplace Standards: Division of Occupational Safety and Health Compliance: Division of Occupational Safety and Health Education and Training: Occupational Safety and Health

[803 KAR 2:300.](#) General.

[803 KAR 2:306.](#) Occupational health and environmental controls.

[803 KAR 2:308.](#) Personal protective equipment.

[803 KAR 2:309.](#) General environmental controls.

[803 KAR 2:314.](#) Machinery and machine guarding.

[803 KAR 2:317.](#) Special industries.

[803 KAR 2:318.](#) Electrical.

[803 KAR 2:400.](#) Adoption of 29 C.F.R. 1926.1-6.

[803 KAR 2:404.](#) Personal protective and lifesaving equipment.

[803 KAR 2:406.](#) Signs, signals, and barricades.

[803 KAR 2:412.](#) Fall protection.

[803 KAR 2:421.](#) Adoption of 29 C.F.R. Part 1926.950-968.

[803 KAR 2:423.](#) Adoption of 29 C.F.R. Part 1926.1050-1060.

[803 KAR 2:500.](#) Maritime employment.

[803 KAR 2:505.](#) Cranes and derricks in construction.

State Regulation Review

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The following was discussed at the May 13, 2014 Administration Regulation Review Subcommittee:

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

[401 KAR 10:031](#). Surface water standards. Peter Goodmann, executive director; Randall Payne, environmental scientist III; and Bruce Scott, commissioner, represented the division. Ted Withrow, Kentuckians for the Commonwealth, appeared in opposition to this administrative regulation.

Federal Regulation Review

EPA, [Identification of Nonattainment Classification and Deadlines for Submission of State Implementation Plan \(SIP\) Provisions for the 1997 Fine Particle \(PM2.5\) National Ambient Air Quality Standard \(NAAQS\) and 2006 PM2.5 NAAQS](#)

Final rule: On January 4, 2013, in *Natural Resources Defense Council (NRDC) v. EPA*, the D.C. Circuit Court remanded to the Environmental Protection Agency (EPA) the “Final Clean Air Fine Particle Implementation Rule” (April 25, 2007) (the “2007 PM2.5 Implementation Rule”) and the “Implementation of the New Source Review (NSR) Program for Particulate Matter Less than 2.5 Micrometers (PM2.5)” final rule (May 16, 2008) (the “2008 PM2.5 NSR Rule”). The Court found that the EPA erred in implementing the 1997 PM2.5 National Ambient Air Quality

Standards (NAAQS) pursuant solely to the general implementation provisions of subpart 1 of Part D of Title I of the Clean Air Act (CAA or Act), without also considering the particulate matter-specific provisions of subpart 4 of Part D. The Court’s ruling remanded the rules to the EPA to address implementation of the 1997 PM2.5 NAAQS under subpart 4. This final rulemaking identifies the classification under subpart 4 for areas currently designated nonattainment for the 1997 and/or 2006 PM2.5 standards, the deadlines for states to submit attainment-related and nonattainment new source review (NNSR) state implementation plan (SIP) elements required for these areas pursuant to subpart 4, and the EPA guidance that is currently available regarding subpart 4 requirements. The final deadlines for 1997 and 2006 PM2.5 NAAQS attainment-related SIP submissions and NNSR requirements for nonattainment areas would replace previous deadlines that were set solely pursuant to subpart 1. Specifically, the EPA is identifying the initial classification of current 1997 and/or 2006 PM2.5 NAAQS nonattainment areas as “Moderate,” and the EPA is setting a deadline of December 31, 2014, for submission of remaining required SIP submissions for these areas, pursuant to and considering the application of subpart 4. This rulemaking affects 1997 and 2006 PM2.5 NAAQS nonattainment areas. After the careful consideration of the comments received on the proposal, the EPA is planning to finalize the rule as it was proposed. As part of the final rulemaking, the EPA is also updating 40 CFR part 81, “Designation of Areas for Air Quality Planning Purposes” for the 1997 and 2006 PM2.5 NAAQS nonattainment areas.

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DATES: This final rule is effective on July 2, 2014.

EPA, [Withdrawal of the Prior Determination or Presumption That Compliance With the CAIR or the NOX SIP Call Constitutes RACT or RACM for the 1997 8-Hour Ozone and 1997 Fine Particle NAAQS](#)

Proposed Rule: The U.S. Environmental Protection Agency (EPA) is proposing to withdraw any prior determination or presumption, for the 1997 8-hour ozone national ambient air quality standard (NAAQS) and the 1997 fine particle (PM2.5) NAAQS, that compliance with the Clean Air Interstate Rule (CAIR) or the NOX SIP Call automatically constitutes reasonably available control technology (RACT) or reasonably available control measures (RACM) for oxides of nitrogen (NOX) or sulfur dioxide (SO₂) emissions from electric generating unit (EGU) sources participating in these regional cap-and trade programs.

DATES: Comments. Comments must be received on or before July 9, 2014.

EPA, [Greenhouse Gas Reporting Program: Publication of Aggregated Greenhouse Gas Data](#)

Notice: The Environmental Protection Agency (EPA) intends to publish aggregated versions of certain data collected under the Greenhouse Gas Reporting Program, including totals, averages, and other aggregated versions of data submitted by individual reporters. The data that we intend to aggregate were determined in previous rulemakings to be confidential business information in their original,

nonaggregated form. This notice describes the criteria we plan to use to determine whether confidential data are sufficiently aggregated such that publishing them would provide useful information while protecting the data that are entitled to confidentiality. In a memorandum to the docket for this notice, we also provide a list of data elements that we have identified for possible future publication in aggregated form if they meet the final version of these criteria.

DATES: Comments. Comments must be received on or before July 9, 2014.

EPA, [Approval and Promulgation of Implementation Plans; Kentucky; Approval of Revisions to the Jefferson County Portion of the Kentucky SIP; Emissions During Startups, Shutdowns, and Malfunctions](#)

Final rule: The Environmental Protection Agency (EPA) is taking final action to approve part of a revision to the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ), on March 22, 2011. The proposed revision was submitted by KDAQ on behalf of the Louisville Metro Air Pollution Control District (District), which has jurisdiction over Jefferson County, Kentucky. The portion of the revision that EPA is approving modifies the Regulation entitled "Emissions During Startups, Shutdowns, Malfunctions and Emergencies" in the Jefferson County portion of the Kentucky SIP. EPA is approving this portion of the March 22, 2011, SIP revision because the Agency has determined that it is in accordance with the requirements for SIP provisions under the Clean Air Act (CAA or Act). EPA will act on the other portions of

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KDAQ's March 22, 2011, submittal, which are severable and unrelated, in a separate action. EPA is also responding to comments received on its May 21, 2013, proposed rulemaking.

DATES: This rule will be effective July 10, 2014.

EPA, [Spring 2014 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 policy makings completed or canceled since the last agenda.

Department of the Interior, [Semiannual Regulatory Agenda](#)

Semiannual regulatory agenda. This notice provides the semiannual agenda of rules scheduled for review or development between spring 2014 and spring 2015. The Regulatory Flexibility Act and Executive Order 12866 require publication of the agenda.

EPA, [Regulation of Fuels and Fuel Additives: Extension of Compliance and Attest Engagement Reporting Deadlines for 2013 Renewable Fuel Standards](#)

Final Rule: The Environmental Protection Agency (EPA) is taking final action on two

components of its annual rulemaking to establish the 2014 renewable fuels standards under Clean Air Act 211(o). The two components are an extension of the compliance demonstration deadline for the 2013 renewable fuel standards, and the associated deadline for submission of attest engagement reports for the 2013 renewable fuel standards. The new deadlines are September 30, 2014 and January 30, 2015, respectively. This action ensures timely amendment of existing deadlines, before compliance obligations would otherwise go into effect. The EPA intends to finalize the remaining portion of its rulemaking to establish the 2014 renewable fuel standards shortly.

DATES: This rule is effective June 16, 2014.

USACE/EPA. [Reopening of Comment Period for the Notice of Availability Regarding the Exemption From Permitting Under Section 404\(f\)\(1\)\(A\) of the Clean Water Act to Certain Agricultural Conservation Practices](#)

Notice of availability; reopening the comment period. The U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) are reopening the comment period for a notice published on April 21, 2014. The notice of availability was for an interpretive rule to address the exemption from permitting provided under section 404(f)(1)(A) of the Clean Water Act (CWA) for discharges of dredged or fill material associated with certain agricultural conservation practices based on the Natural Resources Conservation Service (NRCS) conservation practice standards that are designed and implemented to protect and enhance water quality. While the interpretive rule is already in effect, the agencies recognize

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the importance and value of receiving public input on the implementation of this interpretive rule. EPA and the Corps are reopening the comment period in response to stakeholder requests. Comments submitted between the close of the original comment period and the reopening of this comment period will be accepted and considered.

DATES: The comment period for the interpretive rule, the availability of which was published on April 21, 2014 (79 FR 22276), is reopened through July 7, 2014. Comments must be received on or before July 7, 2014. The comment period was originally scheduled to end on June 5, 2014.

EPA, Amendment to Standards and Practices for All Appropriate Inquiries

Proposed rule: The Environmental Protection Agency (EPA) is proposing to amend the standards and practices for conducting all appropriate inquiries under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) to remove the reference to ASTM International's E1527-05 standard practice. This 2005 standard practice recently was replaced with updated standard E1527-13 by ASTM International, a widely recognized standards development organization. Specifically, EPA is proposing to amend the "All Appropriate Inquiries Rule" to remove the reference to ASTM International's E1527-05 "Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process."

DATES: Written comments must be received by July 17, 2014.

EPA, Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units

Proposed rule: In this action, the Environmental Protection Agency (EPA) is proposing emission guidelines for states to follow in developing plans to address greenhouse gas emissions from existing fossil fuel-fired electric generating units. Specifically, the EPA is proposing state-specific rate-based goals for carbon dioxide emissions from the power sector, as well as guidelines for states to follow in developing plans to achieve the state-specific goals. This rule, as proposed, would continue progress already underway to reduce carbon dioxide emissions from existing fossil fuel-fired power plants in the United States.

DATES: *Comments on the proposed rule.* Comments must be received on or before October 16, 2014.

Comments on the information collection request. Under the Paperwork Reduction Act (PRA), since the Office of Management and Budget (OMB) is required to make a decision concerning the information collection request between 30 and 60 days after June 18, 2014, a comment to the OMB is best assured of having its full effect if the OMB receives it by July 18, 2014.

Public Hearing. Four public hearings will be convened. On July 29, 2014, one public hearing will be held in Atlanta, Georgia, at the Sam Nunn Atlanta Federal Center Main Tower Bridge Conference Area, Conference Room B, 61 Forsyth Street SW., Atlanta, GA 30303, and one will be held in Denver, Colorado, at the EPA's Region 8 Building, 1595 Wynkoop Street, Denver, Colorado 80202. On July 30, 2014, a

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public hearing will be held in Washington, DC, at the William Jefferson Clinton East Building, Room 1152, 1201 Constitution Avenue NW., Washington, DC 20004. On July 31, 2014, a public hearing will be held in Pittsburgh, Pennsylvania at the William S. Moorhead Federal Building, Room 1310, 1000 Liberty Avenue, Pittsburgh, Pennsylvania 15222. More information regarding the hearings will be available at: <http://www2.epa.gov/cleanpowerplan/>.

EPA, [Carbon Pollution Standards for Modified and Reconstructed Stationary Sources: Electric Utility Generating Units](#)

Proposed rule. The Environmental Protection Agency (EPA) is proposing standards of performance for emissions of greenhouse gases from affected modified and reconstructed fossil fuel-fired electric utility generating units. Specifically, the EPA is proposing standards to limit emissions of carbon dioxide from affected modified and reconstructed electric utility steam generating units and from natural gasfired stationary combustion turbines. This rule, as proposed, would continue progress already underway to reduce carbon dioxide emissions from the electric power sector in the United States.

DATES: *Comments on the proposed standards.* Comments on the proposed standards must be received on or before October 16, 2014.

Public Hearing. In a separate action in the **Federal Register**, the EPA is proposing Clean Air Act (CAA) section 111(d) emission guidelines for existing fossil fuel-fired electric utility generating units (EGUs) and is announcing public hearings associated with that action.

Because of the interconnected nature of this proposed rulemaking with the proposed Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, we will hold joint hearings on both proposed rulemakings.

EPA, [Extension of Request for Scientific Views for Updated National Recommended Water Quality Criteria for the Protection of Human Health](#)

Notice; extension of the request for scientific views. The Environmental Protection Agency (EPA) is extending the comment period for the draft updated national recommended water quality criteria for the protection of human health announced in a previous notice entitled “Updated National Recommended Water Quality Criteria for the Protection of Human Health.” In response to stakeholder requests, the EPA is extending the period of time in which the Agency will accept scientific views for an additional 30 days.

DATES: Scientific views must be received on or before August 13, 2014. The comment period was originally scheduled to end on July 14, 2014.

USACE/EPA, [Definition of “Waters of the United States” Under the Clean Water Act; Extension of Comment Period](#)

Proposed rule; Extension of Comment Period. The U.S. Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) are extending the comment period for the proposed rule “Definition of ‘Waters of the United States’ Under the Clean Water Act” published on April 21, 2014 (79 FR 2188). The

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agencies are extending the comment period in response to stakeholder requests for an extension.

DATES: Comments must be received on or before October 20, 2014. The comment period was originally scheduled to end on July 21, 2014.

EPA, [Extension of Request for Scientific Views for External Peer Review Draft Aquatic Life Ambient Water Quality Criterion for Selenium—Freshwater 2014](#)

Notice; extension of the request for scientific views. The Environmental Protection Agency (EPA) is re-opening the comment period for the external peer review draft aquatic life ambient water quality criterion for selenium announced in a previous notice entitled “External Peer Review Draft Aquatic Life Ambient Water Quality Criterion for Selenium—Freshwater 2014.” In response to stakeholder requests, the EPA is extending the period of time in which the Agency will accept scientific views for an additional 30 days.

DATES: Scientific views must be received on or before July 28, 2014. Scientific views postmarked after this date may not receive the same consideration. The comment period was originally scheduled to end on June 13, 2014.

Fish and Wildlife Service. [Policy Regarding Implementation of Section 4\(b\)\(2\) of the Endangered Species Act](#)

Notice; extension of comment period. The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (collectively referred to as the “Services”), announce the extension

of the public comment period on the May 12, 2014, draft policy regarding implementation of section 4(b)(2) of the Endangered Species Act. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of the final policy.

DATES: The Services will accept comments from all interested parties until October 9, 2014.

Fish and Wildlife Service. [Endangered and Threatened Wildlife and Plants; Changes to the Definitions and Regulations for Designating Critical Habitat](#)

Proposed rules; extension of comment periods. The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (collectively referred to as the “Services”), announce the extension of the public comment periods on the May 12, 2014, proposals to revise definitions and regulations regarding critical habitat. Comments previously submitted need not be resubmitted, as they will be fully considered in preparation of each final rule.

DATES: We will consider comments received or postmarked on or before October 9, 2014.

EPA, [Request for Nominations of Scientific Peer Reviewers for EPA’s Approach for Estimating Exposures and Incremental Health Effects From Lead During Renovation, Repair, and Painting Activities in Public and Commercial Buildings](#)

Notice. EPA invites the public to nominate scientific experts to be considered as peer reviewers for the draft document entitled, “Approach for Estimating Exposures and Incremental Health Effects from Lead During

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Renovation, Repair, and Painting Activities in Public and Commercial Buildings” (Technical Approach Document). A nominee, if selected, will assess the accuracy, content, and interpretation of findings of the Technical Approach Document, ensuring that they are factual and scientifically sound. The peer review will assure the Agency of the soundness of the technical approach.

DATES: The nomination period begins on June 27, 2014 and ends on July 18, 2014.

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

Notice of Availability. The Environmental Protection Agency (EPA) is announcing the availability of a final document titled *Integrated Review Plan for the Primary National Ambient Air Quality Standards for Nitrogen Dioxide* (IRP). This document contains the plans for the review of the air quality criteria for health for oxides of nitrogen and the primary 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. This document will be available primarily via the Internet at the following Web site: http://www.epa.gov/ttn/naaqs/standards/nox/s_nox_2012_pd.html.

Fish and Wildlife Service. [Endangered and Threatened Wildlife and Plants; 6-Month Extension of Final Determination on the Proposed Endangered Status for the Northern Long-Eared Bat](#)

Proposed rule; reopening of the comment period. The U.S. Fish and Wildlife Service (Service), announce a 6-month extension of the final determination of whether to list the northern long-eared bat (*Myotis septentrionalis*) as endangered. The Service also reopens the comment period on the proposed rule to list the species. The Service is taking this action based on substantial disagreement regarding the sufficiency or accuracy of the available data relevant to our determination regarding the proposed listing, making it necessary to solicit additional information by reopening the comment period for 60 days. Comments previously submitted need not be resubmitted as they are already incorporated into the public record and will be fully considered in the final rule. The Service will publish a listing determination on or before April 2, 2015.

DATES: The comment period end date is August 29, 2014.

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