



SMG Reg Watch

June 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 deferred the Wastewater Laboratory Certification in June but be assured that these requirements will probably be passed through in July. There are some tricky parts of the proposed regulations that everyone that is involved in water sampling and analysis need to be aware of. For example, while Smith Management Group does not have a laboratory, we do have people who take water samples. These samplers are covered under provisions of the lab certification regulation. Companies whose employees take samples that are picked up by a laboratory will have to get their samplers certified under the regulation.

EPA approved Kentucky's revision in Northern Kentucky to the motor vehicle emission budget and their supplement to the motor vehicle emission budget. Basically Kentucky is updating their mobile emission model to increase the safety margin allocated to motor vehicle emission budgets for NOX and VOCs. It's interesting to note that the Northern

Kentucky maintenance area also includes portions of Cincinnati, Dearborn County, Indiana and entire counties of Butler, Clermont, Clinton, Hamilton and Warren in Ohio. Problems with air monitors in any of those areas requires Northern Kentucky to make changes to their program.

EPA's proposed rule will revise lead reporting threshold and reduce the reporting burden for state, local and tribal agencies, It's intent is also to improve consistency and clarity with other rules, and better reflect current inventory technologies and practices. Based on my very bad experience with EPA modeling over the past two years you should be very leery of information generated by EPA models. EPA's use of "other techniques" and allowing states to provide input information so EPA can model the data themselves is ripe with potential problems.

EPA is proposing to improve the reporting requirements by:

- Lowering the current threshold for reporting lead emissions sources as "point sources" to support the needs of the revised lead ambient monitoring regulation;
- Eliminating the requirement for state, local and tribal agencies to report emissions from wildfires and prescribed fires because **EPA has other techniques** available to estimate such emissions;
- **Requiring agencies to report the inputs needed to model emissions** from mobile sources, rather than requiring state, local and tribal agencies to do that modeling themselves and submit the results;
- Removing the requirements for agencies to report daily and seasonal emissions associated with carbon monoxide and ozone nonattainment

areas and also for areas subject to the nitrogen oxides state implementation plan (NOx SIP) call; and

- Clarifying, removing, or simplifying some current emissions reporting requirements that are not necessary or are not clearly aligned with current inventory terminology and practices.

EPA is apparently developing a “willingness to pay” survey for the Chesapeake Bay Total Maximum Daily Load. Human nature in a time of low employment tells me that no one will be willing to invest much in this endeavor. Want to bet how this survey will turn out? The results will be used to tout the wonderfulness of TMDLs all over America.

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, [Approval and Promulgation of Implementation Plans; Kentucky: Kentucky Portion of Cincinnati-Hamilton, Supplement Motor Vehicle Emissions Budget Update](#)

Proposed rule: EPA is proposing to approve a revision to the Kentucky State Implementation Plan (SIP), submitted to EPA on August 9, 2012, by the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet, Division for Air Quality. Kentucky’s August 9, 2012, SIP revision includes changes to the maintenance plan for the Kentucky portion of the Cincinnati-Hamilton, OH-KY-IN, maintenance area for the 1997 8-hour ozone national ambient air quality standard (NAAQS). The Cincinnati-Hamilton, OH-KY-IN, maintenance area for the 1997 8-hour ozone

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NAAQS includes the counties of Boone, Campbell and Kenton in Kentucky (hereafter also referred to as Northern Kentucky); a portion of Dearborn County, Indiana; and the entire counties of Butler, Clermont, Clinton, Hamilton and Warren in Ohio. Kentucky's August 9, 2012, SIP revision proposes to update the motor vehicle emissions budget using an updated mobile emissions model, the Motor Vehicle Emissions Simulator (also known as MOVES2010a), and to increase the safety margin allocated to motor vehicle emissions budgets for nitrogen oxides and volatile organic compounds for Northern Kentucky to account for changes in the emissions model and vehicle miles traveled projection model. EPA is proposing to approve this SIP revision because the Commonwealth has demonstrated that it is consistent with the Clean Air Act.

DATES: Comments must be received on or before July 5, 2013.

EPA, Approval and Promulgation of Implementation Plans; Kentucky: Kentucky Portion of Cincinnati-Hamilton, Revision to the Motor Vehicle Emissions Budgets

Direct final rule: EPA is taking direct final action to approve a revision to the Kentucky State Implementation Plan (SIP), submitted to EPA on August 9, 2012, by the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet, Division for Air Quality (DAQ). Kentucky's August 9, 2012, SIP revision includes changes to the maintenance plan for the Kentucky portion of the Cincinnati-Hamilton, OH-KY-IN, maintenance area for the 1997 8-hour ozone national ambient air quality standards (NAAQS). The Cincinnati-Hamilton,

OH-KY-IN, maintenance area for the 1997 8-hour ozone NAAQS includes the counties of Boone, Campbell and Kenton in Kentucky (hereafter also referred to as Northern Kentucky); a portion of Dearborn County, Indiana; and the entire counties of Butler, Clermont, Clinton, Hamilton and Warren in Ohio. Kentucky's August 9, 2012, SIP revision proposes to update the motor vehicle emissions budget using an updated mobile emissions model, the Motor Vehicle Emissions Simulator (also known as MOVES2010a), and to increase the safety margin allocated to motor vehicle emissions budgets (MVEBs or budgets) for nitrogen oxides (NOX) and volatile organic compounds (VOC) for Northern Kentucky to account for changes in the emissions model and vehicle miles traveled (VMT) projection model. EPA is approving this SIP revision and deeming the MVEB adequate for transportation conformity purposes, because the Commonwealth has demonstrated that it is consistent with the Clean Air Act (CAA or Act).

DATES: This rule is effective on August 5, 2013 without further notice, unless EPA receives relevant adverse comment by July 5, 2013. If EPA receives such comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

EPA, Proposed Information Collection Request; Comment Request; 40 CFR Part 64 Compliance Assurance Monitoring Program

Notice: The Clean Air Act (CAA) contains several provisions directing the EPA to require source owners to conduct monitoring to support certification as to their status of compliance

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with applicable requirements. These provisions are set forth in section 504 and section 114 of the CAA. Under CAA section 504(c), each operating permit must “set forth inspection, entry, monitoring, compliance, certification, and reporting requirements to assure compliance with the permit terms and conditions.” The Environmental Protection Agency is planning to submit an information collection request, “40 CFR Part 64 Compliance Assurance Monitoring Program” (EPA ICR No. 1663.08, OMB Control No. 2060-0376) to the Office of Management and Budget for review and approval in accordance with the Paperwork Reduction Act (44 U.S.C. 3501, *et seq.*). Before doing so, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed extension of the information collection request, which is currently approved through December 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 Office of Management and Budget control number.

DATES: Comments must be submitted on or before August 12, 2013.

EPA, [Heavy-Duty Engine and Vehicle, and Nonroad Technical Amendments](#)

Notice of proposed rulemaking: EPA is proposing to amend provisions in the Medium- and Heavy-Duty Greenhouse Gas Emissions and Fuel Efficiency final rule issued on September 15, 2011. These proposed amendments would eliminate duplicative reporting requirements, reduce inadvertent minor differences between

the EPA and NHTSA programs regarding such matters as voluntary early model year compliance, better align testing procedures to market realities, and reduce unnecessary testing burdens. EPA is also proposing to amend several regulations by: Adjusting the provisions of the replacement engine exemption; expanding EPA’s discretion to allow greater flexibility under the Transition Program for Equipment Manufacturers related to the Tier 4 standards for nonroad diesel engines; specifying multiple versions of the applicable SAE standard for demonstrating that fuel lines for nonroad spark-ignition engines above 19 kilowatts meet permeation requirements; and allowing for the use of the ethanol-based test fuel specified by the California Air Resources Board for nonroad spark-ignition engines at or below 19 kilowatts. Some of the individual provisions of this action may have minor impacts on the costs and emission reductions of the underlying regulatory programs amended in this action, though in most cases these are simple technical amendments. For those provisions that may have a minor impact on the costs or benefits of the amended regulatory program, any potential impacts would be small and we have not attempted to quantify the potential changes.

DATES: Comments on all aspects of this proposal must be received on or before July 17, 2013.

EPA, [Heavy-Duty Engine and Vehicle, and Nonroad Technical Amendments](#)

Direct final rule: EPA and NHTSA, on behalf of the Department of Transportation, are each adopting corrections to provisions in our respective Medium- and Heavy-Duty

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Greenhouse Gas Emissions and Fuel Efficiency final rule issued on September 15, 2011. These amendments eliminate duplicative reporting requirements, reduce inadvertent minor differences between the EPA and NHTSA programs regarding such matters as voluntary early model year compliance, better align testing procedures to market realities, and reduce unnecessary testing burdens. This action also separately amends several regulations exclusive to EPA by: adjusting the provisions of the replacement engine exemption, expanding EPA's discretion to allow greater flexibility under the Transition Program for Equipment Manufacturers related to the Tier 4 standards for nonroad diesel engines, specifying multiple versions of the applicable SAE standard for demonstrating that fuel lines for nonroad spark-ignition engines above 19 kilowatts meet permeation requirements, and allowing for the use of the ethanol-based test fuel specified by the California Air Resources Board for nonroad spark-ignition engines at or below 19 kilowatts. Some of the individual EPA-only provisions of this action may have minor impacts on the costs and emission reductions of the underlying regulatory programs amended in this action, though in most cases these are simple technical amendments. For those provisions that may have a minor impact on the costs or benefits of the amended regulatory program, any potential impacts would be small and we have not attempted to quantify the potential changes.

DATES: These rules are effective on August 16, 2013 without further notice, unless EPA or NHTSA receives adverse comment. If we receive relevant adverse comment on distinct elements of this rule by July 17, 2013, we will publish a

timely withdrawal in the **Federal Register** indicating which provisions we are withdrawing. The provisions that are not withdrawn will become effective on August 16, 2013 notwithstanding adverse comment on any other provision. The incorporation by reference of certain publications listed in this regulation is approved by the Director of the Federal Register as of August 16, 2013.

[EPA, Revisions to the Air Emissions Reporting Requirements: Revisions to Lead \(Pb\) Reporting Threshold and Clarifications to Technical Reporting Details](#)

Proposed rule: Today's action proposes changes to the existing EPA emission inventory reporting requirements on state, local, and tribal agencies in the current Air Emissions Reporting Requirements rule published on December 17, 2008. The proposed amendments would lower the current threshold for reporting Pb sources as point sources; eliminate the requirement for reporting emissions from wildfires and prescribed fires; and replace a requirement for reporting mobile source emissions with a requirement for reporting the input parameters that can be used to run the EPA models that generate the emissions estimates. In addition, the proposed amendments would reduce the reporting burden on state, local, and tribal agencies by removing the requirements to report daily and seasonal emissions associated with carbon monoxide (CO), ozone (O3), and particulate matter up to 10 micrometers in size (PM10) nonattainment areas and nitrogen oxides (NOX) State Implementation Plan (SIP) call areas, although reporting requirements for those

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emissions would remain in other regulations. Lastly, the proposed amendments would clarify, remove, or simplify some current emissions reporting requirements which we believe are not necessary or are not clearly aligned with current inventory terminology and practices.

DATES: Comments must be received on or before August 19, 2013. Under the Paperwork Reduction Act, comments on the information collection request must be received by EPA and OMB on or before July 22, 2013. The EPA will hold a public hearing on today's proposal only if requested by July 1, 2013.

[EPA, Reconsideration of Certain Startup/Shutdown Issues: National Emission Standards for Hazardous Air Pollutants From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units](#)

Proposed rule; Reopening of Comment Period: On November 30, 2012, the EPA published in the **Federal Register** the proposed rule, "Reconsideration of Certain New Source and Startup/Shutdown Issues: National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units." That proposal opened for reconsideration certain issues, including those related to startup and shutdown. On April 24, 2013, EPA finalized reconsideration of all the

issues included in the proposed rule except those related to startup and shutdown. The EPA is reopening the public comment period for the proposed reconsideration to solicit additional input on specific issues raised during the initial public comment period related to the proposed revisions to the requirements and definitions related to periods of startup and shutdown. The EPA also requests comment on the additional technical analyses it conducted in response to public comments on this subject in Docket ID EPA-HQ-OAR-2009-0234. The National Emission Standards for Hazardous Air Pollutants (NESHAP) rule is referred to as the Mercury and Air Toxics Standards (MATS), and the New Source Performance Standards rule is referred to as the Utility NSPS.

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

Water

[EPA, Additional Documents Available for Public Review Related to Willingness To Pay Survey for Chesapeake Bay Total Maximum Daily Load: Instrument, Pre-Test, and Implementation; Comment Request](#)

Notice: The Environmental Protection Agency has made available for public review a revised Supporting Statement and additional documentation related to its recent information collection request (ICR) submission to OMB entitled "Willingness to Pay Survey for Chesapeake Bay Total Maximum Daily Load: Instrument, Pre-test, and Implementation" (EPA ICR No. 2456.01, OMB Control No. 2010-NEW). The additional documents, now available in the associated docket, are: The Peer Review

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Report, the Focus Group and Cognitive Interview Report and the Description of Hydrological, Biochemical, and Ecosystem Models (Attachment 17 of the revised Supporting Statement). These documents may provide useful information to interested parties regarding the development and design of the survey instruments proposed for this project. Full transcripts of the focus groups and cognitive interviews were not prepared and are therefore not available. Public comments were previously requested on the ICR via the **Federal Register** on May 24, 2012 during a 60-day comment period, which was later extended for an additional 30 days. An additional 30-day comment period was initiated upon submission of the ICR to OMB for review and consideration. This notice allows for an additional 30 days of public comments on the ICR in light of the availability of the additional documentation.

DATES: Additional comments may be submitted on or before July 29, 2013.

EPA, [National Pollutant Discharge Elimination System Regulation Revision: Removal of the Pesticide Discharge Permitting Exemption in Response to Sixth Circuit Court of Appeals Decision](#)

Final Rule: The EPA is amending its regulations to remove language added by the EPA's 2006 NPDES Pesticides Rule which exempted the application of pesticides from National Pollutant Discharge Elimination System (NPDES) permit requirements in two circumstances: When the application of the pesticide is made directly to waters of the United States to control pests that are present in the water, and when the application of the pesticide is made to

control pests that are over, including near, waters of the United States. This rulemaking is in response to the 2009 Sixth Circuit Court of Appeals ruling that vacated the EPA's 2006 NPDES Pesticides Rule.

DATES: This final rule is effective on June 27, 2013.

Energy

EPA, [Regulation of Fuels and Fuel Additives: RFS Pathways II and Technical Amendments to the RFS 2 Standards](#)

Notice of proposed rulemaking: In this Notice of Proposed Rulemaking, EPA is proposing amendments to three separate sets of regulations relating to fuels. First, EPA is proposing to amend certain of the renewable fuels standard (RFS2) program regulations. We believe these proposals will facilitate the introduction of new renewable fuels as well as improve implementation of the program. This proposal includes various changes related to biogas, including changes related to the revised compressed natural gas (CNG)/liquefied natural gas (LNG) pathway and amendments to various associated registration, recordkeeping, and reporting provisions. This proposed regulation includes the addition of new pathways for renewable diesel, renewable naphtha, and renewable electricity (used in electric vehicles) produced from landfill biogas. Adding these new pathways will enhance the ability of the biofuels industry to supply advanced biofuels, including cellulosic biofuels, which greatly reduce the greenhouse gas emissions (GHG) compared to the petroleum-based fuels they replace. It also addresses "nameplate capacity"

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issues for certain production facilities that do not claim exemption from the 20% greenhouse gas (GHG) reduction threshold. In this notice, EPA addresses issues related to crop residue and corn kernel fiber and proposes an approach to determining the volume of cellulosic RINs produced from various cellulosic feedstocks. We also include a lifecycle analysis of advanced butanol and discuss the potential to allow for commingling of compliant products at the retail facility level as long as the environmental performance of the fuels would not be detrimental. Several other amendments to the RFS2 program are included. Second, EPA is also proposing various changes to the E15 misfueling mitigation regulations (E15 MMR). Among the E15 changes proposed are technical corrections and amendments to sections dealing with labeling, E15 surveys, product transfer documents, and prohibited acts. We also propose to amend the definitions in order to address a concern about the rounding of test results for ethanol content violations. Lastly, EPA is proposing changes to the survey requirements associated with the ultra-low sulfur diesel (ULSD) program.

DATES: Comments must be received on or before July 15, 2013. We do not expect a request for a public hearing. However, if we receive a request for a public hearing by July 1, 2013 we will publish information related to the timing and location of the hearing and the timing of a new deadline for public comments.

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