



SMG Reg Watch

March 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

This month, Gina McCarthy, who previously served as Assistant EPA Administration or the Office of Air and Radiation, was nominated by President Obama to serve as the EPA's new administrator. The Senate must confirm Ms. McCarthy's nomination. The hearings are anticipated in the next few weeks. Don't expect much to change. As a matter of fact things could get worse.

On a state level, the Kentucky Division of Water continues work on the selenium regulations. Additionally, the Wastewater Lab Certification Program rules found in 401 KAR 5:320 are being discussed in the Administrative Regulation Review Subcommittee on April 9. These regulations are discussed below. Additionally, the new draft Industrial General Permit has been issued and public comment closed on April 1, 2013. [Click here](#) for more information on the permit and how it could potentially affect your operations.

We are also anticipating new regulations for bona fide prospective purchasers. The state legislature passed HB 465 in 2012 and came up with a criteria for the protection of property owners from liability of contaminated property. This should help with local redevelopment projects. SMG has been successful in implementing the statute. For more information on the law, [click here](#). Regulations regarding HB 465 will be coming out later this year.

On a federal level, EPA continues to be busy in proposing and issuing new regulations. Even more troubling is the avalanche of guidance that EPA continues to issue – especially on water-related issues. Be cautious of these studies and guidance documents as they indicate the direction in which the administration is heading with respect to increased monitoring of water issues.

Finally, it's time to dust off your emergency action plans. EPA was back in Kentucky after an absence of several years conducting inspections under the Clean Air Act Section 112(r). Kentucky gave this program back to EPA several years ago and that may be the reason there have been either limited or no inspections in the state for some time. This rule requires companies of all sizes that use certain listed regulated flammable and toxic substances to develop a Risk Management Program. This doesn't just apply to chemical manufacturers. For example, the inspection was conducted at a meat processing facility.

State Regulation Review

The following administrative regulations are proposed new administrative regulations and will be reviewed by the Administrative Regulation Review Subcommittee on April 9, 2013:

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 April 9, 2013, meeting of the Subcommittee:

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

[401 KAR 10:031](#). Surface water standards. This administrative regulation establishes water quality standards that consist of designated legitimate uses of the surface waters of the Commonwealth and the associated water quality criteria necessary to protect those uses. These water quality standards are minimum requirements that apply to all surface waters in the Commonwealth of Kentucky in order to maintain and protect them for designated uses.

Federal Regulation Review

Air

EPA, [Revision to Ambient Nitrogen Dioxide Monitoring Requirements](#)

Final rule: The EPA is finalizing revisions to the deadlines established in the national ambient air quality standard (NAAQS) for nitrogen dioxide (NO₂) for the near-road component of the NO₂ monitoring network in order to implement a phased deployment approach. This approach will create a series of deadlines that will make the near-road NO₂ network operational between January 1, 2014, and January 1, 2017. The EPA is also finalizing revisions to the approval authority for annual monitoring network plans for NO₂ monitoring.

DATES: This final rule is effective March 14, 2013.

Water

EPA, [Proposed Information Collection Request; Comment Request; EPA's WaterSense Program \(Renewal\); EPA ICR No. 2233.06](#).

Notice. The Environmental Protection Agency is planning to submit a request to renew an existing information collection request (ICR), "EPA's WaterSense Program (Renewal)" (EPA ICR No. 2233.06, OMB Control No. 2040-0272), to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA) (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 proposed extension of the ICR, which is currently approved through June 30, 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.

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WaterSense is a voluntary program designed to create self-sustaining markets for water-efficient products and services via a common label. The program provides incentives for manufacturers and builders to design, produce, and market water efficient products and homes. In addition, the program provides incentives for certified professionals (e.g. certified irrigation auditors, designers, or installation and maintenance professionals) to deliver water-efficient services. The program also encourages consumers and commercial and institutional purchasers of water-using products and systems to choose water-efficient products and use water-efficient practices.

DATES: Comments must be submitted on or before April 30, 2013.

EPA, [Watershed Modeling To Assess the Sensitivity of Streamflow, Nutrient, and Sediment Loads to Climate Change and Urban Development in 20 U.S. Watersheds.](#)

Notice of Public Comment Period and Letter Peer-Review. EPA is announcing a 45-day public comment period for the draft document titled [Watershed Modeling to Assess the Sensitivity of Streamflow, Nutrient, and Sediment Loads to Climate Change and Urban Development in 20 U.S. Watersheds](#) (EPA/600/R-12/058). None of the 20 watersheds are located in Kentucky. EPA also is announcing that an EPA contractor for external scientific peer review will select an independent group of experts to conduct a letter peer review of the draft document. The document was prepared by the National Center for Environmental Assessment within EPA's Office of Research and Development and is intended to characterize the sensitivity of streamflow, nutrient (nitrogen and phosphorus), and sediment loading to a range of plausible mid-21st century climate change and urban development scenarios. The study also provides an improved understanding of methodological challenges associated with integrating existing tools and datasets to assess the

potential effects of climate change and urban development on stream flow and water quality. EPA intends to forward the public comments that are submitted in accordance with this notice to the external peer reviewers for their consideration during the letter review. When finalizing the draft document, EPA intends to consider any public comments received in accordance with this notice. EPA is releasing this draft assessment for the purposes of public comment and peer review. This draft assessment is not final as described in EPA's information quality guidelines and it does not represent and should not be construed to represent Agency policy or views. The draft document is available via the Internet on the NCEA home page under the Recent Additions and the Data and Publications menus at www.epa.gov/ncea.

DATES: The 45-day public comment period begins March 1, 2013 and ends April 15, 2013. Technical comments should be in writing and must be received by EPA by April 15, 2013.

EPA, [Guidelines Establishing Test Procedures for the Analysis of Pollutants Under the Clean Water Act; Analysis and Sampling Procedures](#)

Notice of Final Decision: EPA discussed, but did not propose, a new method, ASTM D7575, for oil and grease in the 2010 proposed Methods Update Rule (MUR). Oil and grease is a method-defined parameter. That is, the nature and amount of material determined by the method is defined in terms of the method. EPA subsequently published a Notice of Data Availability (NODA) on this method that provided new data and requested comment on whether and how EPA should approve the method in Part 136 as an alternative oil and grease method. This document provides EPA's final decision on its reconsideration of this method.

DATES: March 6, 2013.

EPA, [National Rivers and Streams Assessment 008-009 Draft Report](#)

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Notice of availability and request for comments: To better answer questions about the condition of waters across the country, EPA and its state and tribal partners have embarked on a series of surveys under the National Aquatic Resource Surveys (NARS) program. The draft NRSA 2008–2009 is the most recent in this series of surveys. The goals of the draft NRSA 2008–2009 are to:

- Generate scientifically valid and environmentally relevant information on the condition of the nation's river and stream resources
- Identify key stressors to river and stream health and explore their relative importance
- Establish baseline information for future trends assessment

Using a statistical survey design, sites were selected at random to represent the condition of the larger population of rivers and streams across the lower 48 states, from the largest "great rivers" to the smallest headwater streams. 1,924 sites were sampled. The draft NRSA finds that 55% of the nation's river and stream miles do not support healthy biological communities when compared to least disturbed sites in similar ecological regions. Fair conditions are found in 23% of river and stream miles, while 21% are in good condition and support healthy aquatic communities. Of the stressors that were examined, phosphorus and nitrogen are the most widespread. Biological communities are at increased risk for poor condition when phosphorus and nitrogen levels are high. This is the first time a national monitoring study of the overall condition of rivers and streams has been conducted using a statistically-valid random sample approach.

The draft report has undergone State and EPA review. EPA, through this public review, is seeking comment on the information contained in the draft report, the reasonableness of the conclusions, and the clarity with which the information is presented.

You may view and download the draft report from EPA's Web site at <http://water.epa.gov/type/rsl/monitoring/riverssurvey/index.cfm>.

DATES: Comments must be received by 11:59 p.m. May 9, 2013.

COUNCIL ON ENVIRONMENTAL QUALITY. [Economic and Environmental Principles and Requirements for Water and Related Land Resources Implementation Studies](#)

Notice of Availability of Final Principles and Requirements: Section 2031 of the Water Resources Development Act of 2007 (Pub. L. 110–114) directed the Secretary of the Army to revise the "Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies" (Principles and Guidelines), dated March 10, 1983, consistent with several considerations enumerated in the Act. The revised Principles and Guidelines consist of three key components: (1) The Principles and Requirements (formerly called Principles and Standards), setting out broad policy and principles that guide investments; (2) the Interagency Guidelines, providing guidance to Federal agencies for determining the applicability of the Principles and Guidelines and for developing agency specific implementing procedures for formulating, evaluating, and comparing water resources projects, programs, activities and related actions; and (3) the Agency Specific Procedures, outlining agency-specific procedures for incorporating the Principles and Requirements into agency missions and programs.

This notice informs you that the Principles and Requirements, one key component of the Principles and Guidelines, are finalized and available at www.whitehouse.gov/administration/eop/ceq/initiatives/PandG. The Principles and Requirements were developed through a collaborative interagency process that promoted the open exchange of information and perspectives. The process has

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engaged the public through formal public review and workshops, and included an external peer review by the National Academies of Science as required by the Water Resources Development Act of 2007. Modernized Principles and Guidelines will improve Federal government decision making related to investment in water resource projects and, thus, improve how our country plans for infrastructure projects.

DATES: The Principles and Requirements were issued on March 18, 2013.

Energy

EPA, [Regulation of Fuels and Fuel Additives: Identification of Additional Qualifying Renewable Fuel Pathways Under the Renewable Fuel Standard Program](#)

Final Rule: EPA is issuing a final rule identifying additional fuel pathways that EPA has determined meet the biomass-based diesel, advanced biofuel or cellulosic biofuel lifecycle greenhouse gas (GHG) reduction requirements specified in Clean Air Act section 211(o), the Renewable Fuel Standard (RFS) Program, as amended by the Energy Independence and Security Act of 2007 (EISA). This final rule describes EPA's evaluation of biofuels produced from camelina (*Camelina sativa*) oil and energy cane; it also includes an evaluation of renewable gasoline and renewable gasoline blendstocks, and clarifies our definition of renewable diesel. The inclusion of these pathways creates additional opportunity and flexibility for regulated parties to comply with the advanced and cellulosic requirements of EISA and provides the certainty necessary for investments to bring these biofuels into commercial production from these new feedstocks. EPA is not finalizing at this time determinations on biofuels produced from giant reed (*Arundo donax*) or napier grass (*Pennisetum purpureum*) or biodiesel produced from esterification. EPA continues to consider the issues

concerning these proposals, and will make a final decision on them at a later time.

DATES: This rule is effective on May 6, 2013.

Waste

EPA has recently published a guidance document, "Waste Analysis at Facilities that Generate, Treat, Store, and Dispose of Hazardous Wastes" (EPA 530-R-12-001) January 2013. The purpose of this guidance manual is to discuss how a person can perform waste analyses and develop waste analysis plans (WAPs) in accordance with the federal hazardous waste regulations of RCRA. There is no indication on how Kentucky views this document or how it might be implemented. For more information on this rule, click [here](#).

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