



SMG Reg Watch

September 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

September appears to be "Clean Air Act month" because of the large number of issues that have surfaced in connection with the air program. In a major announcement this month, **EPA issued a CO2 Climate New Source Performance Standard**. On September 20th, EPA proposed its revised new source performance standards (NSPS) to "curb" carbon dioxide emissions from new coal power plants establishing a standard that is impossible to meet with current and near future equipment availability. The rule would require units to install carbon capture (which is not commercially available) in order to meet the standard. More information on this standard can be found below and [here](#).

The rule would also require new **large natural gas-fired turbines** to meet a limit 1,000 pounds of CO2 per megawatt hour. Small natural gas fired turbines would need to meet a slightly less

stringent limit of 1,100 pounds of CO2 per megawatt hour.

In a laughable statement, EPA, in the [fact sheet](#) says, "Because these standards are in line with current industry investment patterns, these standards are not expected to have notable costs and are not projected to impact electricity prices or reliability."

Environmental issues and new regulations that we will see in the near future are coming at us quickly. In review of the **US Supreme Court's air cases to be considered in 2013 Term**, it is notable that the Court will review EPA's cross-state air pollution rule (CSAPR), its greenhouse gas (GHG) program and industry's ability to defend against air law complaints.

In other upcoming environmental topics, New Mexico has won tentative EPA approval for its plan to use "**plantwide**" **greenhouse gas (GHG) permit limits** rather than the usual unit-specific GHG permit limits. EPA is proposing to approve the first state request to use a controversial "plantwide applicability limit"(PAL) facility-based approach in greenhouse gas (GHG) permits instead of traditional unit-specific emissions caps, after the agency granted states power to use PALs as part of the latest update to its GHG permitting regulations.

And finally, Several US Senators are asking more questions about EPA's role in developing newly updated estimates of the social cost of carbon (SCC) that were updated without public input and make it easier for the administration to justify rules that lower carbon dioxide (CO2) emissions.

Not to be outdone, water issues remain of utmost importance. On September 4th EPA released the long-awaited proposed rulemaking on Water Quality Standards. These proposed regulations are discussed below. EPA will also host a [webinar](#) on the proposal on November 4th.

Next, on September 17th, EPA and the US Army Corps of Engineers finally sent to OMB a [proposed rule](#) to clarify Clean Water Act Jurisdiction. In conjunction with this move, EPA published a [new study](#) in which scientific evidence is given for the connection between what had previously been considered non-navigable waters (and therefore not regulated by the Clean Water Act) and waters that are covered by the Clean Water Act. The argument is that all of these waters should be regulated by EPA or comparable state programs.

In addition to topics relating to air and water issues – other things are also happening in the environmental world. At the state level, state officials are weighing options for revising controversial preemption provisions in the bipartisan US Senate bill to reform TSCA. It is unclear what Kentucky’s regulators believe, but California is concerned that the preemption language currently contained in the Bill would undermine California’s landmark chemical control programs. For more information on the TSCA legislation, click [here](#).

Elsewhere, Chicago has developed an interesting ordinance to benchmark energy use in buildings. No later than June 1, 2015 and each June 1st thereafter, the owners of certain

non-residential “Group 1 covered buildings” must “benchmark” their buildings for the previous calendar year. Benchmark means tracking and inputting the building’s energy consumption data for the previous calendar year in order to quantify the building’s energy use.

State Regulation Review

The following administrative regulation was deferred from the September 2013 meeting of the Subcommittee:

**ENERGY AND ENVIRONMENT CABINET:
Department for Environmental Protection:
Division of Water: Water Quality Standards:
[401 KAR 10:030](#).** (not amended after comments) (Deferred from December) 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, Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Off-Site Waste and Recovery Operations \(Renewal\)](#)

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Notice: The Environmental Protection Agency has submitted an information collection request (ICR), “NESHAP for Off-Site Waste and Recovery Operations (40 CFR Part 63, Subpart DD) (Renewal)” (EPA ICR No. 1717.09, OMB Control No. 2060–0313), 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 October 31, 2013. Public comments were previously requested via the **Federal Register** (78 FR 33409) on June 4, 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 October 7, 2013.

[EPA, Revisions to Reporting and Recordkeeping Requirements, and Proposed Confidentiality Determinations Under the Greenhouse Gas Reporting Program](#)

Proposed rule: The EPA is proposing amendments to reporting and recordkeeping requirements and an alternative verification approach for the Greenhouse Gas Reporting Program. This action addresses concerns about the potential release of certain data that are inputs to emission equations for which the reporting deadline was deferred until March 31, 2015 while maintaining the EPA’s ability to verify emissions and ensure compliance with

the Greenhouse Gas Reporting Program. In addition, the EPA is proposing confidentiality determinations for the newly proposed data elements in this action.

DATES: Comments must be received on or before November 12, 2013.

[EPA, Proposed Information Collection Request; Comment Request; NOX Budget Trading Program To Reduce the Regional Transport of Ozone \(Renewal\)](#)

Notice: The Environmental Protection Agency is planning to submit an information collection request (ICR), “Information Collection Request Renewal for the NOX Budget Trading Program to Reduce the Regional Transport of Ozone” (EPA ICR No. 1857.06, OMB Control No. 2060–0445) 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.*). 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 February 28, 2014. 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: Comments must be submitted on or before November 18, 2013.

[EPA, Oil and Natural Gas Sector: Reconsideration of Certain Provisions of New Source Performance Standards](#)

Final Amendments: This action finalizes the amendments to new source performance standards for the oil and natural gas sector. The

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Administrator received petitions for reconsideration of certain aspects of the August 12, 2012, final standards. These amendments are a result of reconsideration of certain issues raised by petitioners related to implementation of storage vessel provisions. The final amendments provide clarity of notification and compliance dates, ensure control of all storage vessel affected facilities and update key definitions. This action also corrects technical errors that were inadvertently included in the final standards.

DATES: This final rule is effective on September 23, 2013.

[EPA, Approval and Promulgation of Implementation Plans; Kentucky; Stage II Requirements for Enterprise Holdings, Inc. at Cincinnati/Northern Kentucky International Airport in Boone County](#)

Final Rule: EPA is taking final action to approve a source-specific State Implementation Plan (SIP) revision submitted to EPA by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ) on April 25, 2013, for the purpose of exempting an Enterprise Holdings, Inc., facility from the Clean Air Act (CAA or Act) Stage II vapor control requirements. The subject Enterprise Holdings, Inc., facility is currently being constructed at the Cincinnati/Northern Kentucky International Airport in Boone County, Kentucky. EPA's approval of this revision to Kentucky's SIP is based on the December 12, 2006, EPA policy memorandum from Stephen D. Page, entitled "*Removal of Stage II Vapor Recovery in Situations Where Widespread Use of Onboard*

Refueling Vapor Recovery is Demonstrated." This action is being taken pursuant to the CAA.

DATES: This rule will be effective October 25, 2013.

[Water](#)

[EPA, Water Quality Standards Regulatory Clarifications](#)

Proposed rule: The Environmental Protection Agency (EPA) is proposing changes to the federal water quality standards (WQS) regulation which helps implement the Clean Water Act. The changes will improve the regulation's effectiveness in restoring and maintaining the chemical, physical, and biological integrity of the nation's waters. The EPA is seeking comments from interested parties on these proposed revisions. The core of the current regulation has been in place since 1983; since then, a number of issues have been raised by states, tribes, or stakeholders or identified by the EPA in the implementation process that will benefit from clarification and greater specificity. The proposed rule addresses the following key program areas: Administrator's determinations that new or revised WQS are necessary, designated uses, triennial reviews, antidegradation, variances to WQS, and compliance schedule authorizing provisions.

DATES: Comments must be received on or before December 3, 2013.

[EPA. Agency Information Collection Activities; Proposed Collection; Request for Comments](#)

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[on Three Proposed Information Collection Requests](#)

Notice: In compliance with the Paperwork Reduction Act (PRA), this notice announces that the Environmental Protection Agency (EPA) is planning to submit a request to renew three existing Information Collection Requests (ICRs) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described at the beginning of Supplementary Information, including:

(1) Cooling Water Intake Structure Phase II Existing Facilities (Renewal), EPA ICR No. 2060.05, OMB Control No. 2040-0257; expiration date 01/31/2014.

(2) Information Collection Request for Cooling Water Intake Structures at Phase III Facilities (Renewal), EPA ICR No. 2169.03, OMB Control No. 2040-0268, expiration date 01/31/2014.

(3) Information Collection Request for Animal Sectors (Renewal); EPA ICR No. 1989.08; OMB Control No. 2040-0250, expiration date 01/31/2014.

DATES: Comments must be submitted on or before November 18, 2013.

[EPA, Proposed Information Collection Request; Comment Request; Annual Public Water System Compliance Report](#)

Notice: The Environmental Protection Agency is planning to submit an information collection request (ICR), "Annual Public Water System Compliance Report" (EPA ICR No. 1812.05, OMB Control No. 2020-2020) 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.*). 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 March 31, 2014. 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: Comments must be submitted on or before November 18, 2013.

[EPA, Notification of a Public Meeting of the Science Advisory Board Panel for the Review of the EPA Water Body Connectivity Report](#)

Notice: The EPA Science Advisory Board (SAB) Staff Office announces a public meeting of the SAB Panel to conduct a review of the EPA draft report, *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence (September, 2013 External Review Draft, EPA/600/R-11/098B)*. The EPA's Office of Research and Development (ORD) has developed a draft report reviewing and synthesizing the peer-reviewed scientific literature on the connectivity or isolation of streams and wetlands relative to large water bodies such as rivers, lakes, estuaries and oceans. The purpose of the report, *Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence (September, 2013 External Review Draft, EPA/600/R-11/098B)*, is to summarize the current understanding about these connections, the factors that influence them, and the mechanisms by which connected

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waters singly or in aggregate, affect the function of downstream waters.

DATES: The public meeting will be held on Monday December 16, 2013 from 9:00 a.m. to 5:00 p.m., Tuesday December 17, 2013 from 8:30 a.m. to 5:00 p.m., and Wednesday December 18, 2013 from 8:30 a.m. to 1:00 p.m. (Eastern Time).

EPA, [Water Quality Standards Regulatory Clarifications Proposed Rule; Public Meeting and Public Webinars](#)

Announcement of public meeting and public webinars. The Environmental Protection Agency (EPA) is announcing one public meeting and two public webinars to be held for the proposed rule "Water Quality Standards Regulatory Clarifications," which was published separately in the **Federal Register** (September 4, 2013).

DATES: The public meeting will be held in Washington, DC on October 23, 2013 from 10:00 a.m. to 3:00 p.m. Eastern.

The two public webinars will be held on September 24, 2013 from 1:00 p.m. to 3:00 p.m. Eastern and November 14, 2013 from 1:00 p.m. to 3:00 p.m. Eastern.

The comment period for the proposed rulemaking will end on December 3, 2013. To register for the public meeting or either public webinar, please visit: <http://www.tetratex.com/wqsregs/public/>

EPA, [Draft National Pollutant Discharge Elimination System \(NPDES\) General Permit for Stormwater Discharges From Industrial Activities](#)

Notice: EPA's Regions 1, 2, 3, 5, 6, 7, 8, 9, and 10 are today proposing for public comment the

draft 2013 National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges from industrial activity, also referred to as the Multi-Sector General Permit (MSGP). This draft permit, once finalized, will replace the existing permit covering stormwater discharges from industrial facilities in EPA's Regions 1, 2, 3, 5, 6, 9, and 10 that will expire September 29, 2013, and will provide coverage for industrial facilities in areas where EPA is the NPDES permitting authority in EPA's Regions 7 and 8. This draft permit is similar to the existing permit and will authorize the discharge of stormwater in accordance with the terms and conditions described therein. EPA proposes to issue this permit for five (5) years. EPA seeks comment on the draft permit and on the accompanying fact sheet.

DATES: Comments on the draft general permit must be received on or before November 26, 2013.

Other

Department of Labor. [Occupational Exposure to Respirable Crystalline Silica](#)

Proposed Rule: The Occupational Safety and Health Administration (OSHA) proposes to amend its existing standards for occupational exposure to respirable crystalline silica. The basis for issuance of this proposal is a preliminary determination by the Assistant Secretary of Labor for Occupational Safety and Health that employees exposed to respirable crystalline silica face a significant risk to their health at the current permissible exposure limits and that promulgating these proposed standards will substantially reduce that risk.

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This proposes a new permissible exposure limit, calculated as an 8-hour time-weighted average, of 50 micrograms of respirable crystalline silica per cubic meter of air (50 mg/m³). OSHA also proposes other ancillary provisions for employee protection such as preferred methods for controlling exposure, respiratory protection, medical surveillance, hazard communication, and recordkeeping. OSHA is proposing two separate regulatory texts—one for general industry and maritime, and the other for construction—in order to tailor requirements to the circumstances found in these sectors.

DATES: Written comments, including comments on the information collection determination described in Section IX of the preamble (OMB Review under the Paperwork Reduction Act of 1995), must be submitted (postmarked, sent, or received) by December 11, 2013.

Department of Labor, [Construction Fall Protection Systems Criteria and Practices, and Training Requirements; Extension of the Office of Management and Budget's \(OMB\) Approval of Information Collection \(Paperwork\) Requirements](#)

Request for public comments. OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements contained in the Construction Standards on Fall Protection Systems Criteria and Practices (29 CFR 1926.502), and Training Requirements (29 CFR 1926.503).

DATES: Comments must be submitted (postmarked, sent, or received) by November 26, 2013.

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