



## SMG Reg Watch

April 2015 / 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](mailto:scottr.smith@smithmanage.com).

QUESTIONS, COMMENTS, ADDITIONAL INFORMATION

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### Scott's Thoughts

SMG provides brief blog updates several times each week. Blogs are written by SMG employees, and can be found on our

website. SMG Blog Entries of Note for this month are hyperlinked below:

- [Glyphosate: Cancer-causer or Agenda Item?](#)
- [Northern Long-eared Bat Listed as Threatened](#)
- [Ohio Supreme Court Revokes TMDL Derived NPDES Limits](#)
- [Time for Spring Cleaning! - Local Events](#)
- [Updated List of Lists Now Available](#)
- [April showers may bring May flowers but for stormwater professionals it isn't all roses...](#)
- [Water Health Portal Mapping Website Now Available to the Public](#)
- [West Virginia Senate Bill 423 amends the AST Act](#)
- [Grant Money Available to Kentucky Municipalities](#)
- [KY Division of Water to Hold Listening Sessions for 2015 Triennial Review](#)
- [Pretreatment Program – Types Of Industrial Users](#)
- [You're Invited to KAM's Energy Conference](#)
- [Ozone Season And The Open Burn Ban](#)

### State Regulation Review

The following are proposed administrative regulations that have been filed with the Legislative Research Commission. A public

hearing is scheduled for May 26, 2015 at 10:00 AM.

[805 KAR 1:100](#) – Commission’s Rules of Procedure; Spacing of Deep Well Drilling; Wildcat Wells and Pooling of Interests.

[805 KAR 1:130](#) – Administrative Regulations Relating to Casing, Cementing, Plugging, Gas Detection and Blow-out Prevention in Oil and Gas Wells.

[805 KAR 1:140](#) – Directional and Horizontal Wells.

[805 KAR 1:170](#) – Content of the Operations and Reclamation Plan.

**Kentucky Division of Water is beginning its Triennial Review process.** DOW is holding a series of Kentucky Water Quality Standards Listening Sessions for the 2015 Triennial Review. The Notice includes directions for submitting suggestions and comments, which will be accepted through June 1, 2015 at 4:00 PM. The Notice can be found [here](#).

**The Kentucky Division of Air Quality is hosting a Public Hearing to receive comments on a proposed State Implementation Plan (SIP) revision for portions Northern Kentucky that have been designated as Marginal Ozone Nonattainment for the 2008 8 –hr National Ambient Air Quality Standard.** More information on the SIP and the hearing can be found [here](#).

## Federal Regulation Review

EPA, [National Oil and Hazardous Substances Pollution Contingency Plan \(NCP\); Amending the NCP for Public Notices for Specific Superfund Activities](#)

**Final rule.** The Environmental Protection Agency (EPA or the Agency) is adding language to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) to broaden the methods by which the EPA can notify the public about certain Superfund activities.

**DATES:** This final rule is effective on May 4, 2015.

Fish and Wildlife Service, Interior. [Endangered and Threatened Wildlife and Plants; Threatened Species Status for the Northern Long-Eared Bat With 4\(d\) Rule](#)

**Final rule, and interim rule with request for comments.** The U.S. Fish and Wildlife Service (Service), determine threatened species status under the Endangered Species Act of 1973 (Act), as amended, for the northern long-eared bat (*Myotis septentrionalis*), a bat species that occurs in 37 States, the District of Columbia, and 13 Canadian Provinces. The effect of this final rule will be to add the northern long-eared bat to the List of Endangered and Threatened Wildlife. The Service is also establishing an interim rule under the authority of section 4(d) of the Act that provides measures that are necessary and advisable to provide for the

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conservation of the northern long-eared bat. The Service is seeking public comments on this interim rule, and will publish either an affirmation of the interim rule or a final rule amending the interim rule after the Service considers all comments received. If you previously submitted comments or information on the proposed 4(d) rule the Service published on January 16, 2015, please do not resubmit them. The Service has incorporated them into the public record, and will fully consider them in the final determination on the 4(d) rule.

**DATES:** *Effective dates:* The final rule amending 50 CFR 17.11 and the interim rule amending 50 CFR 17.40 are both effective May 4, 2015.

**[EPA, Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements](#)**

**Notice of public hearing and extension of comment period.** The Environmental Protection Agency (EPA) is announcing a public hearing to be held for the proposed rule titled, “Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements” which published in the **Federal Register** on March 23, 2015. The hearing will be held on Wednesday, April 29, 2015, in Washington, DC. The EPA is also announcing extension of the comment period for the proposed rule to May 29, 2015, to allow for sufficient time

after the public hearing for commenters to submit comments.

**DATES:** *Public Hearing.* The public hearing will be held on April 29, 2015, in Washington, DC.

**[EPA, Chemical Substances When Manufactured or Processed as Nanoscale Materials; TSCA Reporting and Recordkeeping Requirements](#)**

**Proposed rule.** EPA is proposing reporting and recordkeeping requirements for certain chemical substances when they are manufactured or processed at the nanoscale as described in this rule. Specifically, EPA proposes to require persons that manufacture (defined by statute to include import) or process, or intend to manufacture or process these chemical substances to electronically report to EPA certain information, which includes the specific chemical identity, production volume, methods of manufacture and processing, exposure and release information, and existing data concerning environmental and health effects. This proposal involves one-time reporting for existing nanoscale materials and one-time reporting for new discrete nanoscale materials before they are manufactured or processed. This information would facilitate EPA’s evaluation of the materials and a determination of whether further action, including additional information collection, is needed. Consistent with the President’s

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memorandum for Executive Agencies regarding Principles for Regulation and Oversight of Emerging Technologies, this proposed rule would facilitate assessment of risks and risk management, examination of the benefits and costs of further measures, and making future decisions based on available scientific evidence

**DATES:** Comments must be received on or before July 6, 2015.

**EPA, [Additional Air Quality Designations and Technical Amendment To Correct Inadvertent Error in Air Quality Designations for the 2012 Primary Annual Fine Particle \(PM2.5\) National Ambient Air Quality Standards \(NAAQS\)](#)**

**Final rule.** The Environmental Protection Agency (EPA) is establishing air quality designations in the United States (U.S.) for the 2012 primary annual fine particle (PM2.5) National Ambient Air Quality Standards (NAAQS) for five areas in Georgia and neighboring counties in Alabama and South Carolina. The EPA is also changing the initial designation of one area in Ohio, two areas in Pennsylvania, one area shared between Indiana and Kentucky, and one area shared between Kentucky and Ohio for the 2012 PM2.5 NAAQS. These states have recently submitted complete, quality-assured, and certified air quality data for 2014, and based on that data the EPA is finalizing appropriate initial designations for these areas. Lastly, the EPA is making one

minor technical amendment to correct an inadvertent error in the initial designation for a county in Pennsylvania with respect to the 2012 PM2.5 NAAQS.

**DATES:** This final rule is effective on April 15, 2015.

**EPA, [Effluent Limitations Guidelines and Standards for the Oil and Gas Extraction Point Source Category](#)**

**Proposed rule.** EPA proposes a Clean Water Act (CWA) regulation that would better protect human health and the environment and protect the operational integrity of publicly owned treatment works (POTWs) by establishing pretreatment standards that would prevent the discharge of pollutants in wastewater from onshore unconventional oil and gas extraction facilities to POTWs. Unconventional oil and gas (UOG) extraction wastewater can be generated in large quantities and contains constituents that are potentially harmful to human health and the environment. Because they are not typical of POTW influent wastewater, some UOG extraction wastewater constituents can be discharged, untreated, from the POTW to the receiving stream; can disrupt the operation of the POTW (*e.g.*, by inhibiting biological treatment); can accumulate in biosolids (sewage sludge), limiting their use; and can facilitate the formation of harmful disinfection by-products (DBPs). Based on the information collected by EPA, the requirements in this proposal reflect current

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industry practices for unconventional oil and gas extraction facilities, therefore, EPA does not project the proposed rule will impose any costs or lead to pollutant removals, but will ensure that such current industry best practice is maintained over time.

**DATES:** Comments on this proposed rule must be received on or before June 8, 2015. EPA will conduct a public hearing on the proposed pretreatment standards on May 29, 2015 at 1:00 p.m. in the EPA East Building, Room 1153, 1201 Constitution Avenue NW., Washington, DC.

**EPA, [Notice of Availability of Draft Scientific Assessment for Public Comment](#)**

**Notice of availability of draft scientific assessment for public comment.** The Environmental Protection Agency (EPA) is publishing this document on behalf of the United States Global Change Research Program (USGCRP) to announce the availability of the Draft Impacts of Climate Change on Human Health in the United States: A Scientific Assessment for a sixty-day public review. Comments will be carefully reviewed by the relevant chapter author teams. Following revision and further review, a revised draft will undergo final federal interagency clearance.

**DATES:** Comments on this draft scientific assessment must be received by 5:00 p.m. Eastern time on June 8, 2015.

**Fish and Wildlife Service. [Endangered and Threatened Wildlife and Plants; Endangered Species Status for the Big Sandy Crayfish and the Guyandotte River Crayfish](#)**

**Proposed rule.** The U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Big Sandy crayfish (known at the time of the petition as *Cambarus veteranus*, but now known as two distinct species: Guyandotte River crayfish, *C. veteranus*, and Big Sandy crayfish, *C. callainus*) as endangered or threatened under the Endangered Species Act, as amended (Act), and to designate critical habitat. After review of the best available scientific and commercial information, the Service finds that listing the Big Sandy crayfish and the Guyandotte River crayfish is warranted. Accordingly, the Service proposes to list both the Big Sandy crayfish (*C. callainus*), a freshwater crustacean from **Kentucky**, Virginia, and West Virginia, and the Guyandotte River crayfish (*C. veteranus*), a freshwater crustacean from West Virginia, as endangered species under the Act. If the Service finalizes this rule as proposed, they would extend the Act's protections to both species and would add both species to the Federal List of Endangered and Threatened Wildlife. The Service seeks data and comments from the public on this proposed listing rule.

**DATES:** The Service will accept comments received or postmarked on or before June 8,

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2015. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES** below) must be received by 11:59 p.m. Eastern Time on the closing date.

**OSHA, [Asbestos in Construction Standard; 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 the Office of Management and Budget's (OMB) approval of the information collection requirements specified in the Asbestos in Construction Standard (29 CFR 1926.1101).

**DATES:** Comments must be submitted (postmarked, sent, or received) by June 8, 2015.

**NRCS, [Changes to Existing Conservation Program Regulations](#)**

**Final rule.** The Agricultural Act of 2014 (the 2014 Act) made several nondiscretionary changes to NRCS conservation programs. These conservation programs have existing regulations that required adjustments. These adjustments include addressing the required review of operating procedures of the State Technical Committee, adding reference of the Regional Conservation Partnership Program (RCP) to the Watershed Protection and Flood Prevention Act program regulations, adding reference

of RCP to the Healthy Forests Reserve Program (HFRP), expanding the definition of "acreage owned by Indian Tribes" under HFRP, revising and simplifying the Regional Equity provision, and adjusting the Agricultural Management Assistance (AMA) Program to correspond with changes to payment provisions under the Environmental Quality Incentives Program (EQIP). Additionally, the Secretary of Agriculture delegated to NRCS administrative responsibility for implementing the Voluntary Public Access and Habitat Incentive Program (VPA-HIP), and internal NRCS administrative changes warrant updating the appropriate delegated official in the Technical Service Provider (TSP) provision. NRCS published an interim rule with a request for comments on August 1, 2014, to implement changes to these NRCS conservation program regulations that were either necessitated by enactment of the 2014 Act, or required to implement administrative streamlining improvements and clarifications. NRCS received six comments on the interim rule. In this document, NRCS issues a final rule to make permanent these changes and to incorporate two minor mandatory changes in two of the affected parts.

**DATES:** This rule is effective April 9, 2015.

**OSHA, [Communication Tower Safety](#)**

**Request for Information (RFI).** OSHA is aware of employee safety risks in

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communication tower construction and maintenance activities and is requesting information from the public on these risks. This RFI requests information that will assist the Agency in determining what steps, if any, it can take to prevent injuries and fatalities during tower work.

**DATES:** Comments and other information must be submitted (postmarked, sent, or received) by June 15, 2015. All submissions must bear a postmark or provide other evidence of the submission date.

**EPA, [Lead-Based Paint Programs; Extension of Renovator Certifications](#)**

**Final rule.** The Agency is extending the certifications of certain renovators under the Lead Renovation, Repair, and Painting (RRP) rule. In January 2015, the Agency published a proposed rule that would, among other things, change the requirements for the refresher training course that renovators must take to become recertified. EPA is extending certifications of thousands of renovators that will otherwise expire before that rule can be finalized. EPA is taking this action so that, if and when the changes in the proposed rule are finalized, these renovators can take advantage of the changes.

**DATES:** This final rule is effective on April 16, 2015.

**EPA, [Hazardous and Solid Waste Management System; Disposal of Coal](#)**

**[Combustion Residuals From Electric Utilities](#)**

**Final rule.** The Environmental Protection Agency (EPA or the Agency) is publishing a final rule to regulate the disposal of coal combustion residuals (CCR) as solid waste under subtitle D of the Resource Conservation and Recovery Act (RCRA). The available information demonstrates that the risks posed to human health and the environment by certain CCR management units warrant regulatory controls. EPA is finalizing national minimum criteria for existing and new CCR landfills and existing and new CCR surface impoundments and all lateral expansions consisting of location restrictions, design and operating criteria, groundwater monitoring and corrective action, closure requirements and post closure care, and recordkeeping, notification, and internet posting requirements. The rule requires any existing unlined CCR surface impoundment that is contaminating groundwater above a regulated constituent's groundwater protection standard to stop receiving CCR and either retrofit or close, except in limited circumstances. It also requires the closure of any CCR landfill or CCR surface impoundment that cannot meet the applicable performance criteria for location restrictions or structural integrity. Finally, those CCR surface impoundments that do not receive CCR after the effective date of the rule, but still contain water and CCR will

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be subject to all applicable regulatory requirements, unless the owner or operator of the facility dewateres and installs a final cover system on these inactive units no later than three years from publication of the rule. EPA is deferring its final decision on the Bevill Regulatory Determination because of regulatory and technical uncertainties that cannot be resolved at this time.

**DATES:** This final rule is effective on October 14, 2015.

**[EPA, Clean Water Act Methods Update Rule for the Analysis of Effluent; Comment Extension](#)**

**Proposed rule; extension of the public comment period.** Environmental Protection Agency (EPA) received requests for an extension of the period for providing comments on the proposed rule entitled, “Clean Water Act Methods Update Rule for the Analysis of Effluent,” published in the **Federal Register** on February 19, 2015. EPA extends the comment period in order to provide the public additional time to submit comments and supporting information.

**DATES:** EPA extends the public comment period for the proposed rule published February 19, 2015, (80 FR 8956) to May 20, 2015.

**[EPA, Applicability Determination Index \(ADI\) Database System Recent Posting: Applicability Determinations, Alternative Monitoring Decisions, and Regulatory](#)**

**[Interpretations Pertaining to Standards of Performance for New Stationary Sources, National Emission Standards for Hazardous Air Pollutants, and the Stratospheric Ozone Protection Program](#)**

**Notice of availability.** This notice announces applicability determinations, alternative monitoring decisions, and regulatory interpretations that EPA has made under the New Source Performance Standards (NSPS); the National Emission Standards for Hazardous Air Pollutants (NESHAP); and/or the Stratospheric Ozone Protection Program.

**[EPA, Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NESHAP for Natural Gas Transmission and Storage \(Renewal\)](#)**

**Notice.** The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), “NESHAP for Natural Gas Transmission and Storage (40 CFR part 63, subpart HHH) (Renewal)” (EPA ICR No. 1789.09, OMB Control No. 2060–0418) 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 April 30, 2015. Public comments were previously requested via the **Federal Register** (79 FR 30117) on May 27, 2014 during a 60-day comment

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period. This notice allows for an additional 30 days for public comments. A full 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 May 22, 2015.

**OSHA, [Permit-Required Confined Spaces; Extension of the Office of Management and Budget's \(OMB\) Approval of Collection of Information \(Paperwork\) Requirements](#)**

**Request for public comments.** OSHA solicits public comments concerning its proposal to extend the Office of Management and Budget's (OMB) approval of the collection of information requirements contained in the Standard on Permit-Required Confined Spaces (29 CFR 1910.146).

**DATES:** Comments must be submitted (postmarked, sent, or received) by June 26, 2015.

**EPA, [Reconsideration on the Mercury and Air Toxics Standards \(MATS\) and the Utility New Source Performance Standards; Final Action](#)**

**Notice of final action denying petitions for reconsideration.** The U.S. Environmental Protection Agency (EPA) is providing notice that it has responded to 23 petitions for

reconsideration of the final rules titled National Emission Standards for Hazardous Air Pollutants (NESHAP) From Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance (NSPS) for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units, published in the **Federal Register** on February 16, 2012. The agency previously granted reconsideration on several discrete issues and took final action on reconsideration through documents published in the **Federal Register** on April 24, 2013, and November 19, 2014. The Administrator denied the remaining requests for reconsideration in separate letters to the petitioners dated April 21, 2015. A document providing a full explanation of the agency's rationale for each denial is in the docket for these rules.

**DATES:** Effective April 30, 2015.

**Fish & Wildlife. [Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Neosho Mucket and Rabbitsfoot.](#)**

**Final rule.** The U.S. Fish and Wildlife Service (Service), designate critical habitat for two species of mussels, the Neosho mucket (*Lampsilis rafinesqueana*) and rabbitsfoot (*Quadrula cylindrica cylindrica*), under the Endangered Species Act of 1973, as amended (Act). In total, approximately 777 river kilometers (483 river miles) in

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Arkansas, Kansas, Missouri, and Oklahoma fall with the boundaries of the critical habitat designation for the Neosho mucket and approximately 2,312 river kilometers (1,437 river miles) in Alabama, Arkansas, Illinois, Indiana, Kansas, **Kentucky**, Mississippi, Missouri, Ohio, Oklahoma, Pennsylvania, and Tennessee, fall within the boundaries of the critical habitat designation for the rabbitsfoot. The effect of this rule is to extend the Act's protections to these mussels' critical habitats.

**DATES:** This rule is effective on June 1, 2015.

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