



SMG Reg Watch

June 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.

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:

- [New WOTUS Rule has been Finalized](#)
- [Testing of fish from the Ohio River \(Louisville to Paducah\) demonstrates safe mercury levels](#)

- [Massive Sewage Leak Highlights the Need for Advance Planning](#)
- [Audit Policy](#)
- [Pretreatment Standards](#)
- [The Definition of "Waters of the U.S." is Final](#)
- [US Supreme Court Invalidates MATS for Power Plants](#)

State Regulation Review

The following are Proposed Amendments that are being addressed by the Administrative Regulation Review Subcommittee:

ENERGY AND ENVIRONMENT CABINET: Department for Natural Resources: Division of Oil and Gas: Oil and Gas

[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 regulation 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.

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

[803 KAR 2:180](#). Recordkeeping, reporting, statistics

[803 KAR 2:200](#). Confined spaces in construction.

[803 KAR 2:250](#). Discrimination.

[803 KAR 2:305](#). Powered platforms, manlifts, and vehicle-mounted work platforms.

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

[803 KAR 2:402](#). General safety and health provisions.

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

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

The Kentucky Department for Natural Resources filed the proposed administrative regulations with the Legislative Research Commission on May 12, 2015. A public hearing on the administrative regulations is scheduled for June 23, 2015 at 10:00 A.M. Individuals may submit written comments through June 30, 2015.

**ENERGY AND ENVIRONMENT CABINET:
Department for Natural Resources: Division of
Forestry: Forestry**

[402 KAR 3:010](#). Timber sales.

[402 KAR 3:030](#). Best management practices for timber harvesting operations.

[402 KAR 3:050](#). Bad actor notice provisions

The Finance and Administration Cabinet filed the following proposed administrative regulations with the Legislative Research Commission on June 16, 2015. Individuals may submit comments on these regulations.

[200 KAR 5:365](#) Alternative project delivery methods for capitol construction

[200 KAR 5:365E](#) Alternative project delivery methods for capitol construction

Federal Regulation Review

EPA, [Availability of Data on Allocations of Cross-State Air Pollution Rule Allowances From New Unit Set-Asides for the 2015 Compliance Year](#)

Notice of data availability (NODA). The Environmental Protection Agency (EPA) is providing notice of the availability of preliminary calculations of emission allowance allocations to certain units under the Cross-State Air Pollution Rule (CSAPR). Under the CSAPR federal implementation plans (FIPs), portions of each covered state's annual emissions budgets for each of the four CSAPR emissions trading programs are reserved for allocation to electricity generating units that commenced commercial operation on or after January 1, 2010 (new units) and certain other units not otherwise obtaining allowance allocations under the FIPs. The quantities of allowances allocated to eligible units from each new unit set aside (NUSA) under the FIPs are calculated in an annual one- or two round allocation process. EPA has completed preliminary calculations for the first round of NUSA allowance allocations for the 2015 compliance year and has posted spreadsheets containing the calculations on EPA's Web site. EPA will consider timely objections to the preliminary calculations (including objections concerning the identification of units eligible for allocations) and will promulgate a notice responding to any such objections no later than August 1, 2015, the deadline for recording the first-round allocations in sources' Allowance Management System accounts. This notice may concern CSAPR-

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affected units in the following states: Alabama, Arkansas, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, **Kentucky**, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, New York, North Carolina, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee, Texas, Virginia, West Virginia, and Wisconsin.

DATES: Objections to the information referenced in this notice must be received on or before July 1, 2015.

EPA, [Proposed Information Collection Request; Comment Request; Fine Particulate Matter \(PM2.5\) NAAQS Implementation Rule \(Renewal\)](#)

Notice. The U.S. Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), “Fine Particulate Matter (PM2.5) NAAQS Implementation Rule (Renewal)” (EPA ICR No. 2258.04, OMB Control No. 2060–0611), 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, the EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a proposed renewal of a currently approved information collection which was originally approved in conjunction with the EPA’s now-remanded 2007 final rule addressing implementation-related requirements for the 1997 PM2.5 National Ambient Air Quality Standards (NAAQS) and renewed twice since then. On March 23, 2015, the EPA also proposed a new ICR associated with its Notice of Proposed Rulemaking that would replace the remanded

2007 PM2.5 NAAQS Implementation Rule. Until that ICR is approved, the existing ICR will remain in effect, subject to approval of this proposed renewal.

DATES: Comments must be submitted on or before July 31, 2015.

EPA, [Effluent Limitations Guidelines and Standards for the Oil and Gas Extraction Point Source Category; Extension of Comment Period](#)

Proposed rule, extension of the public-comment period. The Environmental Protection Agency (EPA) received requests for an extension of the period for providing comments on the proposed rule entitled “Effluent Limitations Guidelines and Standards for the Oil and Gas Extraction Point Source Category,” published in the **Federal Register** on April 7, 2015. EPA extends the comment period in order to provide the public additional time to submit comments and supporting information.

DATES: Comments: The public comment period for the proposed rule published April 7, 2015, (80 FR 18557, is being extended to July 17, 2015.

EPA, [Public Hearing for the 2014, 2015, and 2016 Standards for the Renewable Fuel Standard Program](#)

Announcement of public hearing. The Environmental Protection Agency (EPA) is announcing a public hearing to be held in Kansas City, Kansas on June 25, 2015 for the proposed rule “Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017.” This proposed rule will be published separately in the **Federal Register**. The pre-publication version of this proposal can be found at

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<http://www.epa.gov/otaq/fuels/renewablefuels/regulations.htm>. In the separate notice of proposed rulemaking, EPA has proposed amendments to the renewable fuel standard program regulations that would establish annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and renewable fuels that would apply to all gasoline and diesel produced in the U.S. or imported in the years 2014, 2015, and 2016. In addition, the separate proposal includes a proposed biomass-based diesel applicable volume for 2017.

DATES: The public hearing will be held on June 25, 2015 at the location noted below under **ADDRESSES**. The hearing will begin at 9:00 a.m. and end when all parties present who wish to speak have had an opportunity to do so. Parties wishing to testify at the hearing should notify the contact person listed under

EPA, [Office of Research and Development; Ambient Air Monitoring Reference and Equivalent Methods: Designation of One New Reference Method and Four New Equivalent Methods](#)

Notice of designation of one reference method and three equivalent methods for monitoring ambient air quality. Notice is hereby given that the Environmental Protection Agency (EPA) has designated, in accordance with 40 CFR part 53, one new reference method and one new equivalent for measuring concentrations of PM_{2.5}, one new equivalent method for measuring PM_{10-2.5}, and two new equivalent methods for measuring ozone (O₃) in the ambient air.

USF&WS. [National Wildlife Refuge System; Draft Programmatic Environmental Assessment for the Use of Genetically Modified Crops in National Wildlife Refuge Farming Programs in Region 4 \(Southeast Region\) of the United States Fish and Wildlife Service; Discontinuation of Preparation of NEPA Document](#)

Notice of discontinuation of preparation of NEPA Document. Pursuant to the National Environmental Policy Act (NEPA) and in accordance with the negotiated settlement of a lawsuit the U.S. Fish and Wildlife Service (Service), published a notice in the **Federal Register** on April 30, 2013, announcing and inviting comments on their intention to develop a draft programmatic environmental assessment (PEA) of the effects of the cultivation and use of genetically modified crops (GMCs) on certain refuges in the Southeast Region to meet wildlife management objectives. As part of the settlement agreement, the Service also agreed to discontinue cultivating and using the GMCs in the Southeast Region after the 2012 crop year and to refrain from such activities until 90 days after completion of an appropriate NEPA analysis of such activities. On July 17, 2014, the Chief of the Service's National Wildlife Refuge System issued a memorandum announcing that the use of GMCs to meet wildlife management objectives within the National Wildlife Refuge System (System) would be phased out and discontinued by January 2016. Accordingly, the Service has concluded that their NEPA process is no longer necessary and, therefore, is notifying the public that it is discontinuing preparation of the PEA.

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EPA, [Renewable Fuel Standard Program: Standards for 2014, 2015, and 2016 and Biomass-Based Diesel Volume for 2017](#)

Proposed rule. Under section 211 of the Clean Air Act, the Environmental Protection Agency (EPA) is required to set renewable fuel percentage standards every year. This action proposes annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel that apply to all motor vehicle gasoline and diesel produced or imported in the years 2014, 2015, and 2016. The EPA is establishing a cellulosic biofuel volume for all three years that is below the applicable volume specified in the Act, and is also proposing to rescind the cellulosic biofuel standard for 2011. Relying on statutory waiver authorities, the EPA is proposing to adjust the applicable volumes of advanced biofuel and total renewable fuel for all three years. The 2015 and 2016 proposed standards are expected to spur further progress in overcoming current constraints in renewable fuel distribution infrastructure, which in turn is expected to lead to substantial growth over time in the production and use of higher-level ethanol blends and other qualifying renewable fuels. In this action, EPA is also proposing the applicable volume of biomass-based diesel for 2014, 2015, 2016, and 2017. Finally, EPA is proposing compliance and attest reporting deadlines for the years 2013, 2014, and 2015, as well as proposing regulatory amendments to clarify the scope of the existing algal biofuel pathway.

DATES: Comments must be received on or before July 27, 2015.

EPA, [Protection of Stratospheric Ozone: The](#)

2016 Critical Use Exemption from the Phase Out of Methyl Bromide

Proposed rule. The Environmental Protection Agency (EPA) is proposing uses that qualify for the critical use exemption and the amount of methyl bromide that may be produced or imported for those uses for the 2016 control period. EPA is proposing this action under the authority of the Clean Air Act to reflect consensus decisions of the Parties to the Montreal Protocol on Substances that Deplete the Ozone Layer at the Twenty-Sixth Meeting of the parties in November 2014.

DATES: Comments must be received on or before July 13, 2015.

EPA, [Notice of Availability of the Environmental Protection Agency's Update of Two Chapters in the EPA Air Pollution Control Cost Manual](#)

Notice of data availability. The Environmental Protection Agency (EPA) is providing notice that two chapters of the current EPA Air Pollution Control Cost Manual ("Control Cost Manual") have been revised and updated. The EPA is requesting comment on the update of these two chapters, both of which deal with oxides of nitrogen (NOx) emissions control measures, and the supporting data and methods applied.

DATES: Comments must be received on or before August 11, 2015.

EPA, [Proposed Information Collection Request; Comment Request; Risk Management Program; Requirements and Petitions to Modify the List of Regulated Substances Under Section 112\(r\) of the Clean Air Act \(CAA\)](#)

Notice. The Environmental Protection Agency is planning to submit an information collection

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request (ICR), “Risk Management Program Requirements and Petitions to Modify the List of Regulated Substances under section 112(r) of the Clean Air Act (CAA).” (EPA ICR No. 1656.15, OMB Control No. 2050–0144) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. 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 December 31, 2015. 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 August 11, 2015.

[EPA, Agency Information Collection Activities; Proposed Collection; Comment Request; Criteria for Classification of Solid Waste Disposal Facilities and Practices, Recordkeeping and Reporting Requirements](#)

Notice. The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), Criteria for Classification of Solid Waste Disposal Facilities and Practices, Recordkeeping and Reporting Requirements—40 CFR part 257, subpart B (EPA ICR No. 1745.08, OMB Control No. 2050–0154) 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, the 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 September 30, 2015. 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 August 14, 2015.

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

Notice of final permit issuance. The EPA’s Regions 1, 2, 3, 5, 6, 7, 8, 9, and 10 are issuing their final 2015 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 permit replaces the existing permit covering stormwater discharges from industrial facilities in the EPA’s Regions 1, 2, 3, 5, 6, 9, and 10 that expired September 29, 2013, and provides coverage for industrial facilities in areas where the EPA is the NPDES permitting authority in the EPA’s Regions 7 and 8. The MSGP consists of 44 separate regional EPA general permits that may vary from each other based on state or tribal certifications and water quality based requirements. As with earlier permits, this permit authorizes the discharge of stormwater associated with industrial activities in accordance with the terms and conditions described therein. Industrial dischargers have the option to instead seek coverage under an individual permit. An individual permit may be necessary if the discharger cannot meet the terms and conditions or eligibility requirements

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in this permit. The EPA is issuing this permit for five years.

DATES: The permit became effective on June 4, 2015. This effective date is necessary to provide dischargers with the immediate opportunity to comply with Clean Water Act requirements in light of the expiration of the 2008 MSGP on September 29, 2013. In accordance with 40 CFR part 23, this permit shall be considered issued for the purpose of judicial review on June 22, 2015. Under section 509(b) of the Clean Water Act, judicial review of this general permit can be requested by filing a petition for review in the United States Court of Appeals within 120 days after the permit is considered issued. Under section 509(b)(2) of the Clean Water Act, the requirements in this permit may not be challenged later in civil or criminal proceedings to enforce these requirements. In addition, this permit may not be challenged in other agency proceedings. Deadlines for submittal of notices of intent are provided in Part 1.2 of the 2015 MSGP. The 2015 MSGP also provides additional dates for compliance with the terms of these permits.

EPA, [Spring 2015 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 currently under development,
- Reviews of existing regulations, and

- Rules completed or canceled since the last agenda.

EPA, [Clean Water Rule: Definition of “Waters of the United States”](#)

Final rule. The Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) are publishing a final rule defining the scope of waters protected under the Clean Water Act (CWA or the Act), in light of the statute, science, Supreme Court decisions in *U.S. v. Riverside Bayview Homes*, *Solid Waste Agency of Northern Cook County v. U.S. Army Corps of Engineers (SWANCC)*, and *Rapanos v. United States (Rapanos)*, and the agencies’ experience and technical expertise. This final rule reflects consideration of the extensive public comments received on the proposed rule. The rule will ensure protection for the nation’s public health and aquatic resources, and increase CWA program predictability and consistency by clarifying the scope of “waters of the United States” protected under the Act.

DATES: This rule is effective on August 28, 2015. In accordance with 40 CFR part 23, this regulation shall be considered issued for purposes of judicial review at 1 p.m. Eastern time on July 13, 2015.

EPA, [Final Updated Ambient Water Quality Criteria for the Protection of Human Health](#)

Notice of availability. The Environmental Protection Agency (EPA) announces the final updated recommended ambient water quality criteria for the protection of human health for ninety-four chemical pollutants to reflect the latest scientific information and implementation of existing EPA policies found in *Methodology for*

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Deriving Ambient Water Quality Criteria for the Protection of Human Health (2000). The EPA issued the draft updated human health criteria on May 13, 2014 and accepted written views from the public until August 13, 2014. The EPA prepared responses to those public comments. The EPA's recommended ambient water quality criteria for the protection of human health provide technical information for states and authorized tribes to establish water quality standards (*i.e.*, criteria) to protect human health under the Clean Water Act. These final 2015 updated section 304(a) human health criteria recommendations supersede EPA's previous recommendations.

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