



## SMG Reg Watch

March 2016 / 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  
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### QUESTIONS, COMMENTS, ADDITIONAL INFORMATION

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### Scott's Thoughts

We should log the months where regulators make their dumbest decisions and see which season or month seems to be where bad decisions cluster. My vote is March. William Shakespeare reminds us about bad things happening in March in his play, Julius Caesar. In the play, Caesar is warned by the soothsayer to "beware the Ides of

March." We should heed the soothsayer's advice.

The "enlightened ones" on March 25 ([81 Fed. Reg 16286](#)) gave us a new U.S. OSHA Silica Dust Rule. The rule is estimated to impact over 675,000 workplaces and more than 2 million construction workers who drill, cut, crush or grind silica containing materials and 300,000 workers in general industry operations such as brick manufacturing, foundries and hydraulic fracturing. Effective June 23, 2016, the new rule will require some companies, particularly the construction industry, to comply by taking certain actions within one year. OSHA maintained the proposed rule's uniform permissible exposure limit of 50 micrograms of respirable crystalline silica per cubic meter of air (ug/m3) is applicable to all affected industries. For the construction industry however, the new rule drops the compliance level from 150 ug/m3 to 50 ug/m3. For maritime and general industries, the rule lowers the standard from 100 ug/m3 to 50 ug/m3. OSHA's action level is 25 ug/m3. A sample at or above the action level triggers the requirements for periodic exposure assessments and requires employers to conduct additional assessments at least every six months until they fall under the Action Level for two consecutive monitoring assessments, taken at least seven days apart. There's much more to this rule. SMG notified you via [blog](#) when the new rule came out, and our Industrial Hygiene

Staff will prepare a more in-depth article that details the new regulation and explain how it will be implemented by the states. Keep in mind that the states, including Kentucky, have 6 months to adopt a standard that is at least as strict. Therefore some of the requirements can vary with the state OSHA requirements. Check back to our website soon.

EPA's Office of the Inspector General (OIG) is looking into how EPA uses Toxic Release Inventory (TRI) data to identify potentially unregulated facilities in its major media programs. The OIG will be working with EPA to help them become more efficient and effective at finding how EPA can use the TRI to look for noncompliance with TRI reporting, surface water discharge permitting requirements and risk management planning. It's a good idea for companies to closely examine their facilities' TRI data to look for discrepancies with other environmental compliance reports and permits.

Heads up. If you think EPA is an obstacle to your projects, you should also keep your eye on the U.S. Fish and Wildlife Service. They are currently proposing to revise its 36 year old policy on mitigation for the adverse impacts of land and water development activities on fish, wildlife, plants and their habitats. Their proposal was published on March 8<sup>th</sup> and can be found below. Comments are due no later than May 9, 2016.

The U.S. Department of Justice and Department of Labor have recently combined forces in an attempt to give teeth

to the OSH Act. Their new approach could result in larger monetary fines and possible prison sentences for employers who violate worker safety standards. On December 17, 2015, Deputy Attorney General Sally Quillian Yates announced that the Environmental Crimes Section of the Environment and Natural Resources Division and the DOL will be working in tandem to increase the frequency and effectiveness of criminal prosecutions of worker safety violations.

While EPA is increasing enforcement of its Risk Management Program it is also proposing significant revisions to its Risk Management Plan Rule. Companies without Risk Management Plans or fully implemented risk management programs are at risk of inspection, which can result in a six figure enforcement actions. The Risk Management Program comes from Section 112(r) of the Clean Air Act and is implemented at 40 CFR Part 68. These requirements are similar to the OSHA's Process Safety Management program scheme. The enforcement of this program is a current [EPA enforcement initiative](#) (Reducing Risks of Accidental Releases at Industrial and Chemical Facilities Fiscal Years 2017-19).

Manufacturers and importers of chemicals listed on the Toxic Substances Control Act (TSCA) Chemical Substances Inventory are required to report information about such chemicals to the EPA. As a result of EPA's changes to the CDR rule, the next set of these reports, due between June 1 and September 30, 2016 will require companies to report more information and follow

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more complicated requirements than the most recent CDR reports from 2012. Because the reports are complex and time-consuming, early planning is important. This would include information gathering and applicability determinations.

EPA published a [proposed rule](#) on February 29, 2016 which will add a vapor intrusion component to the Hazard Ranking System. The Hazard Ranking System is used to evaluate sites for placement on the national Priorities List. Comments on this proposed rule may be submitted through April 29, 2015

In addition to the comments above, 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:

- [Monitoring Enforcement Activity](#)
- [The State of America's Water and Wastewater Infrastructure](#)
- [The EPA's New Enforcement Agenda](#)
- [Kentucky Division of Air Quality Sends Emission Inventory Surveys to Permitted Stationary Sources](#)
- [Local Limits: Determination of Suitable Environmental Criteria](#)
- [Proposed Rule for the Addition of a Subsurface Intrusion Component to the Superfund Hazard Ranking System](#)
- [March is a good time to Schedule a Review of your facility and inventory all tanks and containers of oil that may be subject to the SPCC Rule \(40 CFR Part 112\)](#)

- [City explores Innovative solution for addressing Stormwater Runoff](#)
- [KYDEP tentatively decides to grant regulation exemption variance for Solvent-Contaminated Wipes](#)
- [Division of Compliance Assistance to Host Floodplains, Streams and Wetlands Compliance Workshop](#)
- [Kentucky Senate Considers ending State Mine Safety Inspection for Underground Coal Mines](#)
- [Recovery of Rare Earth Elements from Coal Mining Waste](#)
- [OSHA Amends Silica Standard for Employee Exposure](#)
- [SMG Invites You to an Executive Overview of ISO 14001:2015](#)
- [Updates to the Lexington Stormwater Manual](#)

As the legislative session continues, watch for our Legislative Updates which are posted on our [website](#).

### Federal Regulation Review

**EPA, [EPA Responses to Certain State Designation Recommendations for the 2010 Sulfur Dioxide National Ambient Air Quality Standard: Notice of Availability and Public Comment Period](#)**

**Notice of availability and public comment period.** Notice is hereby given that the Environmental Protection Agency (EPA) has posted on its Internet Web site responses to certain state designation recommendations for the 2010 Sulfur Dioxide (SO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS). The EPA invites the public to review and provide input on its responses during the comment period. The EPA sent its responses directly

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to the states on or about February 16, 2016. The EPA intends to make final the designation determinations for the areas of the country addressed by these responses no later than July 2, 2016. **DATES:** Comments must be received on or before March 31, 2016.

**EPA, [Request for Public Comment on the Draft EPA-USGS Technical Report: Protecting Aquatic Life From Effects of Hydrologic Alteration](#)**

**Notice of availability.** The Environmental Protection Agency (EPA) and the United States Geological Survey are releasing a draft technical report: Protecting Aquatic Life from Effects of Hydrologic Alteration, for a 60-day public comment period. This report was developed because hydrologic alteration can be a contributor of impairment for water bodies that are designated to support aquatic life. Stresses on aquatic life associated with hydrologic alteration may be further exacerbated through climate change. Recent climate trends have included the change in frequency and duration of extreme weather events, such as droughts and floods, which can have an impact on flow and affect aquatic life. The report is a nonprescriptive framework with information to help states, tribes, territories, water resource managers, and other stakeholders responsible for the maintenance of hydrologic flow regime to quantify flow targets for the preservation of aquatic life and habitat. This report also provides information on the relationship between hydrologic condition and water quality and gives examples of what some states and authorized tribes have done to address flow concerns using the Clean Water Act. The framework can also be

used to translate narrative criteria and develop flow targets to protect aquatic life and habitat.

**DATES:** Comments must be received on or before May 2, 2016.

**EPA, [Proposed Information Collection Request; Comment Request; Collection of EPA, Information on Anaerobic Digestion Facilities Processing Wasted Food To Support EPA's Sustainable Food Management Programs](#)**

**Notice.** The Environmental Protection Agency is planning to submit an information collection request (ICR), "Collection of Information on Anaerobic Digestion Facilities Processing Wasted Food to support EPA's Sustainable Food Management Programs" (EPA ICR No. 2533.01, OMB Control No. 2050-NEW) 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 request for approval of a new collection. 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 May 2, 2016.

**OSHA, [Personal Protective Equipment \(PPE\) Standard for General Industry; Extension of the Office of Management and Budget's \(OMB\) Approval of the Information Collection \(Paperwork\) Requirements](#)**

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**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 contained in the Personal Protective Equipment (PPE) Standard for General Industry (29 CFR part 1910, subpart I).

**DATES:** Comments must be submitted (postmarked, sent, or received) by May 2, 2016.

**OSHA, [Standard for General Industry; Extension of the Office of Management and Budget's \(OMB\) Approval of the 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 contained in the Walking and Working Surfaces Standard for General Industry (29 CFR part 1910, subpart D).

**DATES:** Comments must be submitted (postmarked, sent, or received) by May 2, 2016.

**NRCS, [Notice of Proposed Changes to the National Handbook of Conservation Practices for the Natural Resources Conservation Service](#)**

**Notice of availability of proposed changes to the National Handbook of Conservation Practices for public review and comment.** Notice is hereby given of the intention of NRCS to issue a series of revised conservation practice standards in the National Handbook of Conservation Practices. These standards include: Clearing and Snagging (Code

326), Diversion (Code 362), Fish Raceway or Tank (Code 398), Pond Sealing or Lining—Compacted Soil Treatment (Code 521B), Pond Sealing or Lining—Concrete (Code 521C), Sediment Basin (Code 350), Silvopasture (Code 381), Tree/Shrub Establishment (Code 612), Vegetated Subsurface Drain Outlet (Code 604), and Waste Storage Facility (Code 313). NRCS State Conservationists who choose to adopt these practices for use within their States will incorporate them into section IV of their respective electronic Field Office Technical Guide. These practices may be used in conservation systems that treat highly erodible land (HEL) or on land determined to be a wetland. Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 requires NRCS to make available for public review and comment all proposed revisions to conservation practice standards used to carry out HEL and wetland provisions of the law.

**DATES:** Effective Date: This is effective March 4, 2016.

**Bureau of Safety and Environmental Enforcement, Interior. [Information Collection Activities: Oil and Gas Production Measurement, Surface Commingling, and Security; Proposed Collection; Comment Request](#)**

**60-Day notice.** To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Safety and Environmental Enforcement (BSEE) is inviting comments on a collection of information that we will submit to the Office of Management and Budget (OMB) for review and approval. The information collection request (ICR) concerns a renewal to the paperwork requirements in the regulations under Subpart L, Oil and Gas Production

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Measurement, Surface Commingling, and Security.

**DATES:** You must submit comments by May 6, 2016.

**Fish and Wildlife Service, [Proposed Revisions to the U.S. Fish and Wildlife Service Mitigation Policy Announcement of draft policy](#); request for public comment.** The U.S. Fish and Wildlife Service (Service), announce proposed revisions to its Mitigation Policy, which has guided Service recommendations on mitigating the adverse impacts of land and water developments on fish, wildlife, plants, and their habitats since 1981. The revisions are motivated by changes in conservation challenges and practices since 1981, including accelerating loss of habitats, effects of climate change, and advances in conservation science. The revised policy provides a framework for applying a landscape scale approach to achieve, through application of the mitigation hierarchy, a net gain in conservation outcomes, or at a minimum, no net loss of resources and their values, services, and functions resulting from proposed actions. The primary intent of the policy is to apply mitigation in a strategic manner that ensures an effective linkage with conservation strategies at appropriate landscape scales. The Service requests comments, information, and recommendations from governmental agencies, Indian Tribes, the scientific community, industry groups, environmental interest groups, and any other interested parties.

**DATES:** The Service will accept comments from all interested parties until May 9, 2016.

**OSHA, [Authorization To Open Dockets of Denied Variance Applications for Public Access](#)**

**Notice.** In this notice, OSHA announces its intent to update the publication of the dockets of variance applications that it denied in the period from 2014 to 2015. Previously OSHA published a Federal Register notice announcing the denied variance application dockets for the 2010 to 2014 (79 FR 76387) period. OSHA is making this information available to the public to enhance transparency concerning the variance process, to assist the public in understanding the variance process, and to reduce errors in applying for future variances.

**OSHA, [Additional Requirements for Special Dipping and Coating Operations \(Dip Tanks\); Extension of the Office of Management and Budget's \(OMB\) Approval of the Information Collection \(Paperwork\) Requirement](#)**

**Request for public comments.** OSHA solicits public comments concerning its proposal to extend The Office of Management and Budget (OMB) approval of the information collection requirement specified in its Standard on Dipping and Coating Operations (Dip Tanks) (29 CFR 1910.126(g)(4)).

**DATES:** Comments must be submitted (postmarked, sent, or received) by May 10, 2016.

**EPA, [Rulemaking To Affirm Interim Amendments to Dates in Federal Implementation Plans Addressing Interstate Transport of Ozone and Fine Particulate Matter](#)**

**Final rule.** The Environmental Protection Agency (EPA) is affirming and making

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permanent certain amendments previously made on an interim basis to the Code of Federal Regulations (CFR) provisions implementing the Cross-State Air Pollution Rule (CSAPR). The purpose of the interim amendments was to correctly reflect CSAPR's compliance deadlines as revised by the effect of the action of the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit or Court) granting the EPA's motion to lift the previous stay of CSAPR and delay (toll) its deadlines by three years. Consistent with the Court's order, the interim amendments corrected the CFR text to indicate that CSAPR's Phase 1 emissions budgets apply in 2015 and 2016 and that CSAPR's Phase 2 emissions budgets and assurance provisions apply in 2017 and beyond. The interim amendments similarly corrected dates in the CFR text related to specific activities required or permitted under CSAPR by regulated sources, the EPA, and states, as well as dates related to the sunset of obligations arising under the Clean Air Interstate Rule (CAIR) upon its replacement by CSAPR. In this action, following consideration of comments received on the interim amendments, the EPA is affirming the interim amendments and making them permanent without change. This action is independent of a separate currently pending EPA proposal to update CSAPR to address the 2008 National Ambient Air Quality Standards for ozone.

**DATES:** The effective date of this action is May 13, 2016.

**EPA, [Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act](#) Proposed rule.** The Environmental

Protection Agency (EPA), in response to Executive Order 13650, is proposing to amend its Risk Management Program regulations. The proposed revisions include several changes to the accident prevention program requirements including an additional analysis of safer technology and alternatives for the process hazard analysis for some Program 3 processes, third-party audits and incident investigation root cause analysis for Program 2 and Program 3 processes, enhancements to the emergency preparedness requirements, increased public availability of chemical hazard information, and several other changes to certain regulatory definitions and data elements submitted in risk management plans. These proposed amendments seek to improve chemical process safety, assist local emergency authorities in planning for and responding to accidents, and improve public awareness of chemical hazards at regulated sources.

**DATES:** Comments. Comments and additional material must be received on or before May 13, 2016.

**EPA, [Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Generator Standards Applicable to Laboratories Owned by Eligible Academic Entities \(Renewal\)](#)**

**Notice.** The Environmental Protection Agency has submitted an information collection request (ICR), "Generator Standards Applicable to Laboratories Owned by Eligible Academic Entities (Renewal)" (EPA ICR No. 2317.03, OMB Control No. 2050-0204) to the Office of Management and Budget (OMB) for

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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 March 31, 2016. Public comments were previously requested via the Federal Register (80 FR 76467) on December 9, 2015 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 April 13, 2016.

**EPA, [Findings of Failure To Submit State Implementation Plans Required for Attainment of the 2010 1-Hour Primary Sulfur Dioxide National Ambient Air Quality Standard \(NAAQS\)](#)**

**Final rule.** The Environmental Protection Agency (EPA) is taking a final action to find that several states have failed to submit State Implementation Plans (SIPs) to satisfy certain nonattainment area planning requirements of the Clean Air Act (CAA) for the 2010 1-Hour Primary Sulfur Dioxide (SO<sub>2</sub>) National Ambient Air Quality Standard (NAAQS). The purpose of the development and implementation of nonattainment area SIPs is to provide for attainment of the NAAQS as expeditiously as practicable following the designation of an area as nonattainment. These findings of failure to submit establish certain CAA deadlines for the EPA to impose sanctions if a state does not submit a SIP addressing those requirements and for the EPA to

promulgate a Federal Implementation Plan (FIP) to address any outstanding SIP requirements.

**DATES:** The effective date of this action is April 18, 2016.

**EPA, [National Rivers and Streams Assessment 2008/2009 Final Report Notice of availability](#).** This notice announces the availability of EPA's final report on the National Rivers and Streams Assessment (NRSA) 2008/2009. The NRSA describes the results of the nationwide probabilistic survey that was conducted in the summers of 2008 and 2009 by EPA and its state, tribal, and federal partners. The NRSA 2008/ 2009 report includes information on how the survey was implemented, what the findings are on a national and ecoregional scale, and future actions and challenges. You may view and download the final report from EPA's Web site at [www.epa.gov/national-aquatic-resourcesurveys/nrsa](http://www.epa.gov/national-aquatic-resourcesurveys/nrsa)

**OSHA, [National Consensus Standards: Eye and Face Protection](#)**

**Final rule.** On March 13, 2015, OSHA published in the Federal Register a notice of proposed rulemaking (NPRM) to revise its eye and face protection standards for general industry, shipyard employment, marine terminals, longshoring, and construction by updating the references to national consensus standards approved by the American National Standards Institute (ANSI). OSHA received no significant objections from commenters and therefore is adopting the amendments as proposed. This final rule updates the references in OSHA's eye and face standards to reflect the most recent

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edition of the ANSI/International Safety Equipment Association (ISEA) eye and face protection standard. It removes the oldest-referenced edition of the same ANSI standard. It also amends other provisions of the construction eye and face protection standard to bring them into alignment with OSHA's general industry and maritime standards.

**DATES:** This final rule becomes effective on April 25, 2016. The incorporation by reference of certain standards listed in the rule was approved by the Director of the Federal Register as of April 25, 2016. Thru March 23, 2016.

**OSHA, [Occupational Exposure to Respirable Crystalline Silica](#)**

**Final rule.** The Occupational Safety and Health Administration (OSHA) is amending its existing standards for occupational exposure to respirable crystalline silica. OSHA has determined that employees exposed to respirable crystalline silica at the previous permissible exposure limits face a significant risk of material impairment to their health. The evidence in the record for this rulemaking indicates that workers exposed to respirable crystalline silica are at increased risk of developing silicosis and other nonmalignant respiratory diseases, lung cancer, and kidney disease. This final rule establishes a new permissible exposure limit of 50 micrograms of respirable crystalline silica per cubic meter of air (50 mg/m<sup>3</sup>) as an 8-hour time-weighted average in all industries covered by the rule. It also includes other provisions to protect employees, such as requirements for exposure assessment, methods for controlling exposure, respiratory

protection, medical surveillance, hazard communication, and recordkeeping. OSHA is issuing two separate standards—one for general industry and maritime, and the other for construction—in order to tailor requirements to the circumstances found in these sectors.

**DATES:** The final rule is effective on June 23, 2016. Start-up dates for specific provisions are set in § 1910.1053(l) for general industry and maritime and in § 1926.1153(k) for construction.

**EPA, [Applicability Determination Index \(ADI\) Data System Recent Posting: Agency 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 the Environmental Protection Agency (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.

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