



SMG Reg Watch

April 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
scottr.smith@smithmanage.com.

QUESTIONS, COMMENTS, ADDITIONAL INFORMATION

Scott R. Smith,
scottr.smith@smithmanage.com or
koria@smithmanage.com

Scott's Thoughts

Just when the regulated community thought they had heard everything here comes "Next Generation Compliance" onto their landscape. This strategy is intended to achieve a higher rate of compliance and reduce pollution through the use of advanced monitoring and information technologies. Electronic DMRs are an example of a way environmental organizations and citizen groups can

easily identify violators. This will translate into increased frequency of citizen suits and increased enforcement pressure. Millions of "deputized" citizens will be able to monitor a company's compliance through their smartphones and other electronic devices.

You need to really check out the new silica rule that we highlighted last month. It's this simple: if your employees are exposed to sand or dust then you may be covered. OSHA considers employers in the following industries or with employees who work with the following products to be impacted by its new rule: construction; glass products; pottery products; structural clay products; concrete products; foundries; dental laboratories, paintings and coatings; railroad track maintenance; hydraulic fracturing for gas and oil and abrasive blasting. Contact Sarah Carty (sarahc@smithmanage.com), who has written an article on this topic ([OSHA Releases Final Rule on Silica](#)), or Kevin Chaplin (kevinc@smithmanage.com) for more information.

On March 17, EPA finalized its long awaited technical corrections to the Mercury and Air Toxics Standards. EPA has finalized the revisions to the emissions averaging equations and changed the requirements concerning use of clean fuels during startup. EPA also removed the rule's affirmative defense for malfunctions. The final rule will become

effective once published in the Federal Register.

The Energy Policy Modernization Act of 2016 (S.2012) recently passed the Senate. The Bill includes provisions to bolster the electric grid to accommodate renewable energy, promote energy storage technology, improve cybersecurity and streamline and accelerate the permitting process for LNG exports. Now it's on to the House for discussion.

On March 17 the Pipeline and Hazardous Materials Administration published far reaching changes to natural gas pipeline safety regulations. You have 60 days to comment. This rule seeks to regulate pipelines construction prior to 1970 (previously exempt). The rule also includes verification of pipeline material, verification of maximum allowable operating pressure and further testing requirements. There's much more. The Agency estimates that the rule changes would be approximately \$597M over 15 years. We know that number is low. The regulated community should at a minimum request an extension to the comment period so they can adequately respond.

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:

- [Ozone Standards Implementation Act of 2016](#)
- [Louisville in Top 25 Energy Star Cities for 2016](#)

- [Determination the need for Local Limits](#)
- [Expansive Changes to the USFWS Mitigation Policy and How it May Affect You](#)
- [Communications Tower Safety in the Spotlight](#)
- [Energy Project Assessment District \(EPAD\) Proposed for Louisville](#)
- [Local Limits: MAIL and Allocation](#)
- [EPA Updates National Recommended Water Quality Criteria](#)
- [OSHA Releases Final Rule on Silica](#)

State Regulation Review

The Kentucky Energy and Environment Cabinet will conduct a [public hearing](#) on April 29, 2016 at 10 a.m. (EDT) in the Conference Room of the **Division for Air Quality**, 200 Fair Oaks Lane, 1st Floor, Frankfort, Kentucky. This hearing is being held to receive comments on an amendment to Kentucky's [State Implementation Plan \(SIP\)](#) pertaining to 401 KAR 59:174, decommissioning of Stage II Vapor Recovery Systems (VRS) controls of gasoline dispensing facilities in Boone, Campbell, and Kenton Counties.

The Louisville Metro Air Pollution Control Board opens a public comment period April 13, 2016, on amendments to [District Regulation 6.40](#) Standards of Performance for Gasoline Transfer to Motor Vehicles (Stage II Vapor Recovery and Control Systems) Version #4, [Draft #1](#), that were proposed on April 11, 2016. If adopted by the Board, Regulation 6.40 will be

Lexington

1405 Mercer Road
Lexington, KY 40511
859-231-8936
859-231-8997 fax

Louisville

1860 B Williamson Court
Louisville, KY 40223
502-587-6482
502-587-6572 fax



submitted to EPA for inclusion in the Kentucky State Implementation Plan.

Written statements will be accepted by the Board Secretary-Treasurer, Rachael Hamilton, Louisville Metro Air Pollution Control District, 701 W. Ormsby Ave., Suite 303, Louisville, KY 40203, until 5:00 p.m., May 13, 2016. Written statements will also be accepted electronically until the same deadline via the Internet at the e-mail address "airregs@louisvilleky.gov". Oral statements will be accepted at a public hearing on May 18, 2016 at 10 a.m.

The Kentucky Energy and Environment Cabinet will conduct a [public hearing](#) on May 26, 2016 at 10 a.m. (EDT) in the Conference Room of the **Division for Air Quality**, 200 Fair Oaks Lane, 1st Floor, Frankfort, Kentucky. This hearing is being held to receive comments on the following proposed regulations:

[401 KAR 51:010](#) Attainment status designations

[401 KAR 53:010](#) Ambient air quality standards

Division of Water has filed the Small MS4 Permit or [AUTHORIZATION TO DISCHARGE UNDER THE KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM](#) for public notice. Comments may be filed electronically through May 24th at the following e-mail address: DOWPublicNotice@ky.gov

Federal Regulation Review

EPA, [Approval and Promulgation of Implementation Plans; Kentucky; Infrastructure Requirements for the 2010](#)

[Sulfur Dioxide National Ambient Air Quality Standard](#)

Proposed rule. The Environmental Protection Agency (EPA) is proposing to approve portions of the State Implementation Plan (SIP) submission, submitted by the Commonwealth of Kentucky, Energy and Environment Cabinet, Department for Environmental Protection, through the Kentucky Division for Air Quality (KDAQ), on April 26, 2013, to demonstrate that the Commonwealth meets the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 1-hour sulfur dioxide (SO₂) national ambient air quality standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each NAAQS promulgated by EPA, which is commonly referred to as an "infrastructure" SIP. KDAQ certified that the Kentucky SIP contains provisions that ensure the 2010 1-hour SO₂ NAAQS is implemented, enforced, and maintained in Kentucky. EPA is proposing to determine that Kentucky's infrastructure submission, submitted on April 26, 2013, addresses certain infrastructure elements for the 2010 1-hour SO₂ NAAQS.

DATES: Written comments must be received on or before May 4, 2016.

[EPA, Endangered and Threatened Wildlife and Plants; Threatened Species Status for the Big Sandy Crayfish and Endangered Species Status for the Guyandotte River Crayfish](#)

Final rule. The U.S. Fish and Wildlife Service (Service), determine threatened species status under the Endangered Species Act of 1973 (Act), as amended, for the Big Sandy crayfish (*Cambarus*

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callainus), a freshwater crustacean from Kentucky, Virginia, and West Virginia, and endangered status for the Guyandotte River crayfish (*C. veteranus*), a freshwater crustacean from West Virginia. This rule adds these species to the Federal List of Endangered and Threatened Wildlife.

DATES: This rule is effective May 9, 2016.

EPA, [Hazardous Waste Management System; Tentative Denial of Petition To Revise the RCRA Corrosivity Hazardous Characteristic](#)

Notification of tentative denial of petition for rulemaking. The Environmental Protection Agency (EPA or the Agency) is responding to a rulemaking petition (“the petition”) requesting revision of the Resource Conservation and Recovery Act (RCRA) corrosivity hazardous waste characteristic regulation. The petition requests that the Agency make two changes to the current corrosivity characteristic regulation: revise the regulatory value for defining waste as corrosive from the current value of pH 12.5, to pH 11.5; and expand the scope of the RCRA corrosivity definition to include nonaqueous wastes in addition to the aqueous wastes currently regulated. After careful consideration, the Agency is tentatively denying the petition, since the materials submitted in support of the petition fail to demonstrate that the requested regulatory revisions are warranted, as further explained in this document. The Agency’s review of additional materials it identified as relevant to the petition similarly did not demonstrate that any change to the corrosivity characteristic regulation is warranted at this time. The Agency is also soliciting public comment on this tentative

denial and the questions raised in this action.

DATES: Comments must be received on or before June 10, 2016.

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

Notice and request for public comment.

All 10 EPA Regions are proposing for public comment on the draft 2017 National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges from construction activities, also referred to as the “2017 Construction General Permit (CGP)” or the “draft permit.” The draft permit, once finalized, will replace the existing general permit covering stormwater discharges from construction activities that will expire on February 16, 2017. EPA proposes to issue this permit for five (5) years, and to provide permit coverage to eligible operators in all areas of the country where EPA is the NPDES permitting authority, including Idaho, Massachusetts, New Hampshire, and New Mexico, Indian country lands, Puerto Rico, the District of Columbia, and most U.S. territories and protectorates. EPA seeks comment on the draft permit and on the accompanying fact sheet, which contains supporting documentation. This Federal Register document describes the draft permit in general and also includes specific topics on which the Agency is particularly seeking comment. EPA encourages the public to read the fact sheet to better understand the draft permit. The fact sheet and draft permit can be found at <https://>

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www.epa.gov/npdes/stormwaterdischarges-construction-activities.

DATES: Comments on the draft permit must be received on or before May 26, 2016.

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Louisville
1860 B Williamson Court
Louisville, KY 40223
502-587-6482
502-587-6572 fax

