



SMG Reg Watch

May 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

The West Virginia Legislature fired back at EPA over the agency's [wood stove rule](#) and in the process killed the state's entire environmental rules package. To become effective, all proposed changes, additions or deletions to West Virginia's environmental rules and regulations must be approved by the state legislature. Included in the Rules Package were updated New Source Performance

Standards, waste combustion regulations and regulations affecting a number of National Ambient Air Quality Standards. The rule that caused the problem was EPA's requirement that wood stove manufacturers reduce air emissions. Opponents described the rule as effective ban on wood stoves and that the rule allowed the government to inspect the type of wood being burned. They also thought the rule would make the WVDEP primarily responsible for "enforcing the rule in thousands of homes across West Virginia, wasting state tax dollars and sapping resources that could be used for legitimate pollution enforcement elsewhere". One House member was reported to say, "...if they wish to make such foolish regulations, they will have to enforce them on their own and send EPA officials to do so". EPA would be wise to let this rule languish in the dusty books of unenforceability. Knocking on doors in West Virginia enforcing this rule would be a very bad idea.

Keep an eye on the implementation of [EPA's October 26, 2015 rule](#) tightening the ozone National Ambient Air Quality Standard from 75 ppb under the 2008 standard to 70 ppb. Kentucky and several other states have petitioned the D.C. Court of Appeals to review the rule in a case now consolidated as *Murray Energy Corporation v. EPA*, (D.C. Cir No. 15-1385). The petitioners argue that the background ozone, occurring naturally in the environment, could make it virtually

impossible for some regions to attain the new 70 ppb standard.

Other EPA/Kentucky initiatives to watch include:

- Secretary Snavely has convened a [work group](#) to review regulations affecting the disposal of radioactive materials. One issue recently gaining attention is oil and gas drilling muds containing low-level radioactive wastes. The workgroup will also,
 - Review current issues that are impacting the oil and gas industry relating to disposal of radioactive materials;
 - Review the current administrative regulations and statutes affecting radioactive materials;
 - Suggest revisions to statutes and administrative regulations that are appropriate.
- [Draft National Pollutant Discharge Elimination System \(NPDES\) General Permit for Stormwater Discharges for Construction Activities](#). The proposed rule will replace the current general permit, which expires on February 16, 2017. The permit will be issued for five years. Comments were due on this rule May 26, 2016.
- Another issue to watch is the release of the [Draft Integrated Review Plan for the National Ambient Air Quality Standards](#) for Particulate Matter. EPA announced the availability for public review of a draft document

titled, *Draft Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter*. Comments are due June 23, 2016.

- Startup, Shutdown & Malfunction- Kentucky is in the process of evaluating how to respond to EPA's finding that the state's SSM regulation is inadequate. This issue has lots of implications and needs to be watched carefully.

The absurdity of the Obama Administration's energy policy has never been clearer. The Energy Information Administration announced in May that natural gas production from hydraulically fractured wells now makes up about two-thirds of total U.S. marketed gas production. Hydraulic fracturing accounts for about half of the current U.S. crude oil production. What a better way to celebrate this news than to place more onerous regulations on the oil and gas industry. The Administration finalized methane emission standards (see below) for the industry that are stricter than what appeared in the proposed rule. The new regulations apply immediately to new and modified wells and in a change from the proposed rules, **will include low producing wells and require more frequent site inspections**. While most of the requirements for new wells would apply immediately, energy companies have a year to submit leak detection and repair plans. The President confirmed that EPA's next step to punish the industry for being creative and productive will address air regulations for existing sources.

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EPA added an additional burden to the oil and gas industry under the final “Source Determination Rule”, adopted on May 12, 2016. The definition of “adjacent” is critical because the adjacency of oil and gas equipment and activities is a key factor in determining whether they must be deemed a single “stationary source” for purposes of the Prevention of Significant Deterioration (PSD) and Nonattainment New Source Review (NNSR) programs or a “major source” for purposes of the Clean Air Act Title V operating permit program. Under the new rule new or modified equipment or activities are “adjacent” if they are on the same surface site or on sites that share equipment and are within one quarter mile of each other. This is a complicated rule that should be reviewed carefully to clarify the applicability of the rule to specific operations and to determine which equipment may not automatically be covered by the regulation.

OSHA published their dream list of regulations they want to develop on May 18, 2016. New to their dream list is Noise in Construction and Preventing Workplace Violence in Healthcare. OSHA will issue Requests for Information in November 2016 to use in the development of these new rules.

EPA is contemplating substantial changes to its greenhouse gas reporting rules (January 15, 2016). From a strategic standpoint, it would be a good idea for industry to review this proposed rule and begin to plan for what may be coming your way.

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:

- [EPA Files Final Brief to U.S. District Court of Appeals](#)
- [EPA Requires Energy Producers to Reduce Methane](#)
- [EPA Announces New Drinking Water Health Advisory Levels for Per Fluorinated Chemicals](#)
- [Local Limits Allocation Methods and Duration](#)
- [Criminal Charges in Flint Water Crisis](#)
- [Jurisdictional Determination](#)

State Regulation Review

Metro Louisville Urban Heat Island Study. Louisville Metro Office of Sustainability recently released an [Urban Heat Island Study](#) for metro Louisville. The report can be found [here](#). The public is invited to [comment](#) as well as attend [public input meetings](#) on the study. According to the Office of Sustainability’s website, following the public comment period, the city and others are expected to announce policy changes to begin the long-term process of reducing the city’s heat island.

Those changes will join efforts already underway to make Louisville more sustainable. Those include:

- Move Louisville, the 20-year transportation plan for the city;
- The Compact of Mayors, with the city and businesses pledging to reduce greenhouse emissions;

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- Trees Louisville;
- A new policy calling for the city to no longer mow vacant lots, parks and right of ways on Air Quality Alert Days.

State Implementation Plan revision. The Kentucky Energy and Environment Cabinet will conduct a [public hearing](#) on June 21, 2016 at 10 a.m. (EDT) in Training Room B of the GAPS Training Facility, 801 Teton Trail, Frankfort, Kentucky. This hearing is being held to receive comments on a proposed [State Implementation Plan revision](#) to redesignate the Kentucky portion of the Cincinnati-Hamilton, Ohio-Kentucky-Indiana ozone nonattainment area to attainment for the 2008 8-hour ozone National Ambient Air Quality Standard. This revision, when approved by the U.S. EPA will redesignate Boone, Campbell and Kenton Counties to attainment.

Federal Regulation Review

EPA, [Determinations of Attainment by the Attainment Date, Extensions of the Attainment Date, and Reclassification of Several Areas for the 2008 Ozone National Ambient Air Quality Standards](#)

Final rule. The Environmental Protection Agency (EPA) is taking final action on three separate and independent types of determinations for each of the 36 areas that are currently classified as “Marginal” for the 2008 ozone National Ambient Air Quality Standards (NAAQS). First, the EPA is determining that 17 areas attained the 2008 ozone NAAQS by the applicable attainment date of July 20, 2015, based on complete, quality-assured and certified ozone monitoring data for 2012–2014.

Second, the EPA is granting 1-year attainment date extensions for eight areas on the basis that the requirements for such extensions under the Clean Air Act (CAA) and the EPA’s implementing regulations have been met. Third, the EPA is determining that 11 areas failed to attain the 2008 ozone NAAQS by the applicable attainment date of July 20, 2015, and thus are reclassified by operation of law as “Moderate” for the 2008 ozone NAAQS. States containing any or any portion of these new Moderate areas must submit State Implementation Plan (SIP) revisions that meet the statutory and regulatory requirements that apply to 2008 ozone nonattainment areas classified as Moderate by January 1, 2017.

DATES: This rule is effective on June 3, 2016.

EPA, [Reconsideration of Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units](#)

Notice of final action denying petitions for reconsideration. The U.S. Environmental Protection Agency (EPA) received six petitions for reconsideration of the final Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units, published in the Federal Register on October 23, 2015. The agency is providing notice that it is denying five of these petitions, and deferring action on the issue of treatment of biomass raised in the petitions of both the Biogenic CO2 Coalition and the State of Wisconsin. The basis for the EPA’s action is set out fully in

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a separate memorandum available in the rulemaking docket.

DATES: Effective May 6, 2016.

[EPA, Revision to the Research, Development and Demonstration Permits Rule for Municipal Solid Waste Landfills](#)

Final rule. The Environmental Protection Agency (EPA) is publishing a final rule to revise the maximum permit term for Municipal Solid Waste Landfill (MSWLF) units operating under Research, Development and Demonstration (RD&D) permits. The RD&D permit program, which began in 2004, allows landfill facilities to utilize innovative methods that vary from the run-on control systems, liquids restrictions, and final cover criteria prescribed in 40 CFR part 258 if these systems are determined by the Director of an approved State to be at least as protective as those criteria. The current rule limits permits for these units to three years, and they are renewable three times for a total permit term of 12 years. This revision allows the Director of an approved State to increase the number of permit renewals to six, for a total permit term of up to 21 years.

DATES: This final rule is effective on November 10, 2016.

[EPA, National Emission Standards for Hazardous Air Pollutants: Site Remediation](#)

Proposed rule; notice of reconsideration of final rule; request for public comment. This action proposes to amend the National Emission Standards for Hazardous Air Pollutants (NESHAP): Site Remediation (Site Remediation Rule) by removing exemptions from the rule for site

remediation activities performed under authority of the Comprehensive Environmental Response and Compensation Liability Act (CERCLA) and for site remediation activities performed under a Resource Conservation and Recovery Act (RCRA) corrective action or other required RCRA order. The Environmental Protection Agency (EPA) is also proposing to remove the applicability requirement that site remediations be co-located with at least one other stationary source regulated by another NESHAP. The EPA is seeking comment on these issues, but is not requesting comment on any other issues or provisions of the final Site Remediation Rule at this time.

DATES: Comments must be received on or before June 27, 2016. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before June 13, 2016.

[EPA, Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Brownfields Program—Accomplishment Reporting \(Renewal\)](#)

Notice. The Environmental Protection Agency has submitted an information collection request (ICR), “Brownfields Program—Accomplishment Reporting (Renewal)” (EPA ICR No. 2104.06, OMB Control No. 2050-0192) 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 May 31, 2016. Public comments

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were previously requested via the Federal Register (81 FR 10859) on March 2, 2016 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 June 13, 2016.

[EPA, Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Solid Waste Disposal Facility Criteria \(Renewal\)](#)

Notice. The Environmental Protection Agency has submitted an information collection request (ICR), “Solid Waste Disposal Facility Criteria (Renewal)” (EPA ICR No. 1381.11, OMB Control No. 2050-0122) 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 May 31, 2016. Public comments were previously requested via the Federal Register (81 FR 8956) on February 23, 2016 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 June 13, 2016.

[EPA, National Wetland Condition Assessment 2011 Final Report](#)

Notice of availability. This notice announces the availability of EPA’s report on the National Wetland Condition Assessment (NWCA) 2011. The NWCA describes the results of the nationwide probabilistic survey that was conducted in the spring and summer of 2011 by EPA and its state and tribal partners. The NWCA 2011 report includes information on how the survey was implemented, what the findings are on a national and ecoregional scale, and future actions.

[EPA, Proposed Information Collection Request; Comment Request; National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings](#)

Notice. The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), “National Volatile Organic Compound Emission Standards for Automobile Refinish Coatings” (EPA ICR No. 1765.08, OMB Control No. 2060-0353) 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 November 30, 2016. An Agency may not conduct or sponsor and a person is not required to respond to a collection of

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information unless it displays a currently valid OMB control number.

DATES: Comments must be submitted on or before July 18, 2016.

EPA, [Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Spill Prevention, Control, and Countermeasure \(SPCC\) Plans \(Renewal\)](#)

Notice. The Environmental Protection Agency has submitted an information collection request (ICR), “Spill Prevention, Control, and Countermeasure (SPCC) Plans (Renewal)” (EPA ICR No. 0328.17, OMB Control No. 2050-0021) 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 May 31, 2016. Public comments were previously requested via the Federal Register (81 FR 1625) on January 13, 2016, 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 June 20, 2016.

EPA, [Stormwater Management in Response to Climate Change Impacts: Lessons From the Chesapeake Bay and Great Lakes Regions](#)

Notice of availability. The Environmental Protection Agency is announcing the

availability of the document titled, “Stormwater Management in Response to Climate Change Impacts: Lessons from the Chesapeake Bay and Great Lakes Regions” (EPA/600/R-15/087). The document was prepared by the National Center for Environmental Assessment (NCEA) within EPA’s Office of Research and Development. This document describes insights gained from a series of EPA and National Oceanic and Atmospheric Administration (NOAA) sponsored workshops with communities in the Chesapeake Bay and Great Lakes regions to address climate change in stormwater adaptation efforts. The final document is available via the Internet on EPA’s Risk Web page under Recent Announcements at <http://www.epa.gov/risk>.

DATES: The document will be available on or around May 19, 2016.

EPA, [Protection of Stratospheric Ozone: Determination 31 for Significant New Alternatives Policy Program](#)

Determination of acceptability. This determination of acceptability expands the list of acceptable substitutes pursuant to the U.S. Environmental Protection Agency’s (EPA) Significant New Alternatives Policy (SNAP) program. This action lists as acceptable additional substitutes for use in the refrigeration and air conditioning sector.

DATES: This determination is effective on May 23, 2016.

EPA, [Proposed Information Collection Request; Comment Request; EPA Application Materials for the Water Infrastructure Finance and Innovation Act](#)

Notice. The Environmental Protection Agency is planning to submit an

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information collection request, EPA Application Materials for the Water Infrastructure Finance and Innovation Act (EPA ICR no. 2549.01, OMB Control No. 2040-NEW) to the Office of Management and Budget 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 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 July 22, 2016.

EPA, [Availability of Data on Allocations of Cross-State Air Pollution Rule Allowances From New Unit Set-Asides for the 2016 Compliance Year](#)

Proposed rule; 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 setaside (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 2016 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, 2016, the deadline for recording the first-round allocations in sources' Allowance Management System accounts. This notice may concern CSAPR-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 June 27, 2016.

EPA, [Renewable Fuel Standard Program: Standards for 2017 and Biomass-Based Diesel Volume for 2018](#)

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 the annual percentage standards for cellulosic biofuel, biomass-based diesel, advanced biofuel, and total renewable fuel that would apply to all motor vehicle gasoline and diesel produced or imported in the

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year 2017. The EPA is proposing a cellulosic biofuel volume that is below the applicable volume specified in the Act. Relying on statutory waiver authorities, the EPA is also proposing to reduce the applicable volumes of advanced biofuel and total renewable fuel. The proposed standards are expected to continue driving the market to overcome constraints in renewable fuel distribution infrastructure, which in turn is expected to lead to substantial growth over time in the production and use of renewable fuels. In this action, we are also proposing the applicable volume of biomass-based diesel for 2018.

DATES: Comments must be received on or before July 11, 2016. EPA will announce the public hearing date and location for this proposal in a supplemental Federal Register document.

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