



## SMG Reg Watch

June 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

Since most people don't know where their electricity comes from, I thought I'd provide some information in our following editions of this page on Kentucky's farm products and the impact farming has on Kentucky's economy. Kentucky is home to 76,500 farms. The average farm size in Kentucky is 170 acres, compared to the national average of 435 acres. Of Kentucky's 25.4 million acres, 51% is

farmland, accounting for 13 million acres. Our agriculture is dominated by small family farms. Over 57% have annual sales of less than \$10,000. Kentucky Agriculture's total economic impact on our economy in 2014 was \$45.6 Billion. These fun facts demonstrate why we should be paying attention to issues, particularly from the federal government, that will adversely impact our farmers. In 2013, Kentucky farmers spent just over \$3.9 billion on feed, seed, fertilizer, fuel and oil, electricity and labor. This represents a substantial financial impact to Kentucky's smaller local economies.

Recent EPA regulatory decisions are troubling, more troubling than those that have transpired over the past several years. It appears that the regulated community is being machine gunned this year with regulatory edicts that are constructed more to punish the regulated community than providing meaningful rules that protect the environment and the public. Ted Crews of the Competitive Enterprise Institute has recently rolled out his annual report card on federal regulation. In 2015, there were 3,408 federal rules published in the federal register comprising 81,910 pages of that document. Federal agencies will continue their command and control doctrine even as this administration leaves later this year. According to Mr. Crews, regulators spanning 60 federal departments, agencies and commissions have nearly 3,300 regulations still in the pipeline

waiting to be finalized in what remains in 2016. In addition to regulations, federal agencies use guidance documents (no public input) to control the regulated community. At this time, Mr. Crews reports that the air agency has 60 guidance documents, solid waste 50 and water 20. The guidance numbers seem low to me. It's time for Congress to step up their efforts to oversee the Administrative Branch in their development of this onslaught of regulations.

EPA is moving forward with implementing the Clean Energy Incentive Program despite the stay of the Clean Power Plan. On June 16, EPA issued a proposed rule titled Clean Energy Incentive Program Design Details. This rule is part of the Clean Power Plan that was finalized in 2015 that regulates CO2 and has been stayed by the US Supreme Court. This rule will confuse states and the regulated community by on one hand telling the states that they do not need to meet current CPP deadlines in light of the stay but on the other hand suggesting that compliance deadlines may or may not be extended following completion of the current judicial proceedings.

US House of Representative Energy and Commerce Committee Chairman Fred Upton along with Energy and Power Subcommittee Chairman Ed Whitfield and oversight and Investigation Subcommittee Chairman Time Murphy sent a letter to EPA Administrator Gina McCarthy alleging agency actions undermining the stay issued by the US Supreme Court of the Clean Power Plan.

In an effort to further erode individual states ability to manage difficult situations at permitted facilities, EPA in a sue and settle tactic with NRDC, published a proposed rule on June 14 to remove affirmative defense for emergency conditions from the Title V operating air permit regulations. This regulation if finalized would mean that facilities would need to meet their permit conditions even during start up, shut down or malfunctions. Individual states had in their regulations how they would meet these conditions. If this regulation is finalized a facility would be subject to penalties or citizens' lawsuits during those episodes. Looks like a financial windfall for NRDC.

The US Army Corps of Engineers published a [proposal to reissue and modify their nationwide permits \(NWP\)](#) on June 1. Many members of the regulated community utilize this streamlined process to comply with the Clean Water Act for projects with minimal adverse environmental effects. Examples would include utility line (also pipeline and electrical transmission) installation, agricultural production, industrial development and general maintenance. It is expected that that some groups will file comments raising concerns that the NWP approval process does not adequately address impacts to natural resources and endangered species. The regulated community that utilize this rule needs to review this proposal and provide strong comments by August 1. The Corps is seeking comments on the proposed NWP in light of its June 29, 2015 Waters of the US rule. Specifically, the Corps is seeking views on how the waters of the US rule

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might affect the applicability of the NWP, the efficiency of the proposed NWP, general conditions contained in the NWP and definitions that would help ensure that activities result in minimal adverse effects.

In addition to the 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:

- [Kentucky EEC's BIG MOVE!](#)
- [Proposed Changes to MSD Green Infrastructure Design Manual](#)
- [EPA Publishes "Technical Guidance for Assessing Environmental Justice in Regulatory Analysis"](#)
- [Louisville Faces Possible Nonattainment Designation with the 2015 Ozone NAAQS](#)
- [Site Development and Endangered Species - You have options in Kentucky!](#)
- [DNA of Anammox Bacteria used for Shortcut Nitrogen Removal](#)
- [A Common Sense Assessment and Local Limits Adoption Process](#)
- [Is Dilution the Solution?](#)

**State Regulation Review**

**Placed on the June Agenda**

ENERGY AND ENVIRONMENT CABINET  
 Department for Environmental Protection  
 Division for Air Quality  
 Ambient Air Quality  
[401 KAR 53:010](#). Ambient air quality standards.

**Amended after comments**

ENERGY AND ENVIRONMENT CABINET:  
 Department for Environmental Protection:  
 Division of Waste Management:  
 Identification and Listing of Hazardous Waste  
[401 KAR 31:040](#). Lists of hazardous wastes.

**Removed from the June Agenda**

ENERGY AND ENVIRONMENT CABINET  
 Department for Environmental Protection  
 Division for Air Quality  
 Attainment and Maintenance of the National Ambient Air Quality Standards  
[401 KAR 51:010](#). Attainment status designations. (Comments Received)

**Federal Regulation Review**

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**AIR**

**EPA, [Source Determination for Certain Emission Units in the Oil and Natural Gas Sector AGENCY: Environmental Protection Agency \(EPA\).](#)**

**Final rule.** The U.S. Environmental Protection Agency (EPA) is finalizing a revision to regulations applicable to permitting of stationary sources of air pollution under the New Source Review (NSR) and title V programs in the Clean Air Act (CAA or Act). For sources in the oil and natural gas sector, this rule clarifies the

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meaning of the term “adjacent” that is used to determine the scope of a “stationary source” for purposes of the Prevention of Significant Deterioration (PSD) and Nonattainment NSR (NNSR) preconstruction permitting programs and the scope of a “major source” in the title V operating permit program in the onshore oil and natural gas sector. The revised definitions are based on the proximity of emitting activities and consideration of whether the activities share equipment. EPA believes that this clarification will provide greater certainty for the regulated community and for permitting authorities, and will result in more consistent determinations of the scope of a source in this sector. The EPA is adopting this revised definition in the regulations that apply to permits issued by the EPA and states to which the EPA has delegated federal authority to administer these programs. Other state and local permitting authorities with EPA-approved programs may also revise their permit programs to adopt this definition, but are not required to do so.

**DATES:** This final rule is effective on August 2, 2016.

**EPA, [Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources](#)**

**Final rule.** This action finalizes amendments to the current new source performance standards (NSPS) and establishes new standards. Amendments to the current standards will improve implementation of the current NSPS. The new standards for the oil and natural gas source category set standards for both greenhouse gases (GHGs) and volatile organic compounds (VOC). Except for the

implementation improvements, and the new standards for GHGs, these requirements do not change the requirements for operations covered by the current standards.

**DATES:** This final rule is effective on August 2, 2016.

**EPA, [Removal of Title V Emergency Affirmative Defense Provisions From State Operating Permit Programs and Federal Operating Permit Program](#)**

**Proposed rule.** The Environmental Protection Agency (EPA) is proposing to remove the affirmative defense provisions for emergencies found in the regulations for state and federal operating permit programs. These provisions establish an affirmative defense that sources can assert in civil enforcement cases when noncompliance with certain emission limitations in operating permits occurs because of qualifying “emergency” circumstances. These provisions, which have never been required elements of state operating permit programs, are being removed because they are inconsistent with the enforcement structure of the Clean Air Act (CAA) and recent court decisions from the U.S. Court of Appeals for the D.C. Circuit. The removal of these provisions is consistent with other recent EPA actions involving affirmative defenses and would harmonize the enforcement and implementation of emission limitations across different CAA programs. The EPA is also taking comment on various implementation consequences relating to the proposed removal of the emergency affirmative defense provisions.

**DATES:** Comments. Comments must be received on or before August 15, 2016.

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

**Notice of availability (NOA).** The Environmental Protection Agency (EPA) is providing notice that two chapters of the EPA Air Pollution Control Cost Manual (Control Cost Manual) have been finalized and are available to the public. These chapters, titled “Chapter 1—Selective NonCatalytic Reduction” and “Chapter 2—Selective Catalytic Reduction” are components of “Section 4—Nitrogen Oxide Controls” and incorporate comments received on draft versions made available in a Notice of Data Availability (NODA) published on June 12, 2015. A response to comment (RTC) document summarizing comments and agency responses is available for each chapter. In addition, cost calculation information is provided electronically for each chapter enabling estimation of costs for installing and operating NOx control measures. The final chapters, RTC and cost calculation documents are available at [https://www3.epa.gov/ttn/ecas/cost\\_manual.html](https://www3.epa.gov/ttn/ecas/cost_manual.html). In addition, all public comments received by the agency are available in the docket for this Notice of Availability (EPA-HQ-OAR- 2015-0341).

**[EPA, Air Plan Approval; Kentucky; Source Specific Revision for Louisville Gas and Electric](#)**

**Proposed rule.** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky through its Energy and Environment Cabinet, Department of

Environmental Protection, Division for Air Quality (KY DAQ) on February 13, 2013, for the purpose of establishing emission requirements for the changeover from coal-fired units U4, U5 and U6 to a new natural gas-fired combined cycle (NGCC) generating unit U15 and auxiliary boiler U16 at the Louisville Gas and Electric Company, Cane Run Generating Station (LG & E Cane Run Facility).

**DATES:** Comments must be received on or before July 15, 2016.

**[EPA, Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units](#)**

**Final rule; notice of final action on reconsideration.** This action sets forth the Environmental Protection Agency's (EPA) final decision on the issues for which it granted reconsideration on January 21, 2015, which pertain to certain aspects of the February 7, 2013, final rule titled “Standards of Performance for New Stationary Sources and Emissions Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units” (CISWI rule). The EPA is finalizing proposed actions on these four topics: Definition of “continuous emission monitoring system (CEMS) data during startup and shutdown periods;” particulate matter (PM) limit for the waste-burning kiln subcategory; fuel variability factor (FVF) for coal-burning energy recovery units (ERUs); and the definition of “kiln.” This action also includes our final decision to deny the requests for reconsideration of all other issues raised in the petitions for reconsideration of the 2013 final

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commercial and industrial solid waste incineration rule for which we did not grant reconsideration.

**DATES:** The amendments in this rule to 40 CFR part 60, subpart DDDD, are effective June 23, 2016, and to 40 CFR part 60, subpart CCCC, are effective December 23, 2016. The incorporation by reference of certain publications listed in this rule was approved February 7, 2013.

**EPA, [Approval and Promulgation of Air Quality Implementation Plans; Indiana; Redesignation of the Indiana Portion of the Louisville Area to Attainment of the 1997 Annual Standard for Fine Particulate Matter](#)**

**Proposed rule; supplemental.** The Environmental Protection Agency (EPA) is issuing a supplement to its July 11, 2013, proposed approval of Indiana’s request to redesignate the Indiana portion of the Louisville, Indiana-Kentucky, area to attainment for the 1997 annual national ambient air quality standard (NAAQS or standard) for fine particulate matter (PM<sub>2.5</sub>). After EPA’s proposed redesignation in 2013, an audit of the Kentucky monitoring program identified problems which invalidated monitoring data for 2012 and the beginning of 2013. Because of this invalid data, the area could not meet the requirement that the entire area must demonstrate attainment of the standard using the most current three years of data. This supplemental proposal provides new quality-assured, quality-controlled data for the most recent three years of data showing that the entire area attains the 1997 PM<sub>2.5</sub> standard. In the supplemental proposal EPA is proposing that the entire Louisville area is attaining the 1997 PM<sub>2.5</sub> NAAQS based on the most

recent three years of data. EPA also discusses the maintenance plan out-year emission projections, and the Cross-State Air Pollution Rule (CSAPR) remanded budgets impact on the Louisville area—because the status of these issues has changed from the initial proposal to now. EPA is seeking comment only on the issues raised in this supplemental proposal, and is not re-opening for comment other issues raised in the July 11, 2013, proposed approval.

**DATES:** Comments must be received on or before July 25, 2016.

**EPA, [Air Plan Approval; KY Infrastructure Requirements for the 2010 Nitrogen 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 nitrogen dioxide (NO<sub>2</sub>) 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 NO<sub>2</sub> NAAQS is implemented, enforced, and maintained in Kentucky. EPA is proposing to determine

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that Kentucky's infrastructure submission, submitted on April 26, 2013, addresses certain infrastructure elements for the 2010 1-hour NO<sub>2</sub> NAAQS.

**DATES:** Written comments must be received on or before July 27, 2016.

**EPA, [Clean Energy Incentive Program Design Details](#)**

**Proposed rule.** In this action, the Environmental Protection Agency (EPA) is proposing design details of the Clean Energy Incentive Program (CEIP). The CEIP is a program that states have the option to adopt if they wish to incentivize certain early emission reduction projects under the Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units (also known as the Clean Power Plan Emission Guidelines (EGs)). The framework for the CEIP was established in the Clean Power Plan EGs, where the EPA also noted that the design details of the program would be developed in a follow-on action. This proposal addresses those design details. In addition, we are re-proposing the CEIP-related aspects of the proposed rate-based and mass-based model trading rules—referred to in this action as optional example regulatory text. This proposal is consistent with the Supreme Court's orders staying the Clean Power Plan during judicial review. The timing elements of the CEIP may be adjusted, if necessary, upon resolution of the petitions for review of the Clean Power Plan.

**DATES:** Comments. Comments must be received on or before August 29, 2016.

## WASTE

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

**Extension of comment period.** The Environmental Protection Agency (EPA or the Agency) is extending the comment period on the tentative denial of a petition to revise the Resource Conservation and Recovery Act (RCRA) corrosivity hazardous waste characteristic regulation, published in the Federal Register on April 11, 2016. EPA is tentatively denying the rulemaking petition because the materials submitted in support of the petition fail to demonstrate that the requested regulatory revisions are warranted, as further explained in the tentative denial. 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 comment period is being extended to December 7, 2016.

**DATES:** Comments must be received on or before December 7, 2016.

## WATER

**USACE, [Proposal To Reissue and Modify Nationwide Permits](#)**

**Notice of proposed rulemaking.** The U.S. Army Corps of Engineers (Corps) is soliciting comments for the reissuance of the existing nationwide permits (NWPs), general conditions, and definitions, with some modifications. The Corps is also proposing to issue two new NWPs and one new general condition. The Corps is requesting comment on all aspects of these proposed nationwide permits. The



reissuance process starts with this publication of the proposed NWP in the Federal Register for a 60- day comment period. The purpose of this Federal Register document is to solicit comments on the proposed new and modified NWPs, as well as the NWP general conditions and definitions. Shortly after the publication of this Federal Register document, each Corps district will publish a public notice to solicit comments on its proposed regional conditions for these NWPs. **DATES:** Submit comments on or before August 1, 2016.

**EPA, [Notice of Extension to Comment Period on the National Pollutant Discharge Elimination System: Applications and Program Updates Proposed Rule](#)**

**Extension of Comment Period.** EPA is extending the comment period for the notice, “National Pollutant Discharge Elimination System (NPDES): Applications and Program Updates.” In response to stakeholder requests, EPA is extending the comment period for an additional 15 days, from July 18, 2016 to August 2, 2016.

**DATES:** The comment period for the notice that was published on May 18, 2016 (81 FR 31344), is extended. Comments must be received on or before August 2, 2016.

**EPA, [Preliminary 2016 Effluent Guidelines Program Plan](#)**

**Notice of availability.** This notice announces the availability of the Environmental Protection Agency’s (EPA) Preliminary 2016 Effluent Guidelines Program Plan (Preliminary 2016 Plan) and solicits public comment. Section 304(m) of the Clean Water Act (CWA) requires EPA to biennially publish a plan

for new and revised effluent limitations guidelines, after public review and comment. The Preliminary 2016 Plan identifies any new or existing industrial categories selected for effluent guidelines or pretreatment standards and provides a schedule for their development. EPA typically publishes a preliminary plan upon which the public is invited to comment, and then publishes a final plan thereafter. The information and analyses from the 2015 Annual Review were used in developing the Preliminary 2016 Plan. **DATES:** Comments must be received on or before July 27, 2016.

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

**Final rule.** The Environmental Protection Agency (EPA) is publishing a final Clean Water Act (CWA) regulation that protects human health, the environment and the operational integrity of publicly owned treatment works (POTWs) by establishing pretreatment standards that prevent the discharge of pollutants in wastewater from onshore unconventional oil and gas (UOG) extraction facilities to POTWs. UOG extraction wastewater can be generated in large quantities and contains constituents that are potentially harmful to human health and the environment. Certain UOG extraction wastewater constituents are not typical of POTW influent wastewater and 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 beneficial use; and can facilitate the formation of harmful disinfection by-products (DBPs). Based on

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the information collected by EPA, the requirements of this final rule reflect current industry practices for onshore unconventional oil and gas extraction facilities. Therefore, EPA does not project that the final rule will impose any costs or lead to pollutant removals, but will ensure that current industry best practice is maintained over time.

**DATES:** The final rule is effective on August 29, 2016.

## OTHER

**US Fish & Wildlife.** [Habitat Conservation Plan, and Draft Implementing Agreement; Receipt of an Application for an Incidental Take Permit, Wildcat Wind Farm, Madison and Tipton Counties, Indiana](#)

**Notice of availability; request for comments.** The U.S. Fish and Wildlife Service (Service), has received an application from Wildcat Wind Farm I, LLC (applicant), for an incidental take permit (ITP) under the Endangered Species Act of 1973, as amended (ESA), for its Wildcat Wind Farm (Wildcat) (project). If approved, the ITP would be for a 28-year period and would authorize the incidental take of an endangered species, the Indiana bat, and a threatened species, the northern long-eared bat. The applicant has prepared a draft habitat conservation plan (HCP) that describes the actions and measures that the applicant would implement to avoid, minimize, and mitigate incidental take of the Indiana bat and northern long-eared bat. The ITP application also includes a draft implementing agreement (IA). The Service also announces the availability of a draft Environmental Assessment (DEA), which has been

prepared in response to the permit application in accordance with the requirements of the National Environmental Policy Act (NEPA). The Service requests public comment on the application and associated documents. **DATES:** The Service will accept comments received or postmarked on or before August 4, 2016.

**EPA, [Evaluating Urban Resilience to Climate Change: A Multi-Sector Approach](#) Notice of public comment period.** EPA is announcing a 30-day public comment period for the draft document titled “Evaluating Urban Resilience to Climate Change: A MultiSector Approach” (EPA/600/R-15/312). EPA is also announcing that Versar, Inc., an EPA contractor for external scientific peer review, will select four independent experts from a pool of eight to conduct a letter peer review of the same draft document. The document was prepared by the National Center for Environmental Assessment (NCEA) within EPA’s Office of Research and Development (ORD). This document describes an assessment tool that uses quantitative and qualitative indicators to help cities identify areas of resilience and vulnerability to climate change impacts and introduces example case studies from Washington, DC and Worcester, Massachusetts. EPA intends to forward the public comments that are submitted in accordance with this document to the external peer reviewers for their consideration during the letter peer review. When finalizing the draft document, EPA intends to consider any public comments received in response to this notice. EPA is releasing this draft document for the purposes of public

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comment and peer review. This draft document is not final as described in EPA's information quality guidelines and it does not represent and should not be construed to represent Agency policy or views. The draft document is available via the internet on EPA's Global Change Research Program Products and Publications Web page at <https://www.epa.gov/risk/globalchange-research-program-products-andpublications>.

**DATES:** The 30-day public comment period begins June 21, 2016, and ends July 21, 2016. Technical comments should be in writing and must be received by EPA by July 21, 2016. The document will be available on or around June 22, 2016.

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