



## SMG Reg Watch

August 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 Obama Administration's progressive arm appears to be pushing for more policy changes even in the waning months of the administration. One of the corner posts of the Administration's initiatives was the concept of "sue and settle." Under this concept a public interest group sues EPA, then EPA "settles" the issue. As part of EPA's settlement, the public interest groups are paid as prescribed by the

various environmental laws, and the case is not heard in court nor does it follow any of the usual legal resolution paths.

An example of this occurred after EPA reissued the [Industrial Stormwater MSGP](#) in June 2015. In this instance, public interest groups filed lawsuits challenging the permit as failing to adequately protect waterbodies. In August 2016, the government and the plaintiffs reached (you guessed it) a [settlement agreement](#).

You need to pay attention to this because the settlement obligates EPA to commence a "study" that would need to be completed before the current stormwater permit expires. The study would evaluate the effectiveness of the benchmark monitoring provisions contained in the permit; evaluate **numeric retention standards**; review the merits of infiltration versus discharge treatment for improving water quality and **prioritize industry sectors for the development of numeric effluent limitation** or other stormwater control measures. Other ideas incorporated into the settlement included potentially delaying authorization to discharge stormwater if the facility is subject to a pending stormwater enforcement action, potentially prohibiting stormwater discharges from surfaces paved with coal tar sealant and potentially expanding monitoring requirements for discharges to impaired streams. Oh, by the way, the settlement

obligates EPA to pay \$165,000 in fees to the plaintiffs.

Another example involves OSHA's recent settlement with industry groups which resulted in a modified interpretative document regarding how the agency determines the concentrations of a chemical that triggers inclusion under the Process Safety Management Program. [The memo titled, "Process Safety Management of Highly Hazardous Chemicals and Covered Concentrations of Listed Appendix A Chemicals"](#), defines for the first time the concentration of a chemical that must be present in a process for it to count as above the threshold quantity of the PSM program.

Landfills have been added to the list of entities that will have to make substantial changes to comply with the Obama Administration's [climate change policies](#). These [air quality guidelines](#) apply to landfills constructed, modified or reconstructed on or before July 17, 2014, with a design capacity of at least 2.5 million metric tons and 2.5 million cubic meters. The rules require affected landfills to install and operate a gas collection control system within 30 months after landfill gas emissions reach a 34 metric tons of non-methane organic compounds (NMOC) per year. This is a decrease from the existing standard of 50 metric tons of NMOC per year. Also included in the rule are many new requirements some of which include creating a subcategory for "Closed Landfills", adjusting startup, shutdown and malfunction periods, expanding surface emissions monitoring and many other provisions.

In addition to the above "Scott's Thoughts" SMG staff 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 Asked to Regulate Asbestos Under New TSCA Rule](#)
- [Louisville's 10-Year Solid Waste Master Plan](#)
- [RACM Determination for IN portion of the Cincinnati-Hamilton 1997 Annual PM2.5 NAA](#)
- [Local Limits: Review and Detailed Re-Evaluation](#)
- [EPA Investigating Switch from Bacterial to Viral Indicator for Recreational Water Quality](#)
- [New Energy Star® Portfolio Manager Features](#)
- [Property Owners - Beware of Formally Cleaned Closed Sites](#)
- [Impact of Climate Change on Stormwater Management](#)

### Regulation Review

**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.

**ENERGY AND ENVIRONMENT CABINET:  
Department of Environmental  
Protection: Division of Air Quality:  
Attainment and Maintenance of the  
National Ambient Air Quality Standards**

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

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### AIR

#### EPA, Air Plan Approval; Kentucky; Revisions to Louisville Definitions and Ambient Air Quality Standards

**Proposed rule.** On March 22, 2011, and May 3, 2012, the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ), submitted revisions to the Kentucky State Implementation Plan (SIP) on behalf of the Louisville Metro Air Pollution Control District (District). At this time, the Environmental Protection Agency (EPA) is proposing to approve several portions of the submissions that modify the District's air quality regulations as incorporated into the SIP. The revisions to the regulatory portion of the SIP that EPA is proposing to approve pertain to changes to the District's air quality standards for lead (Pb), particulate matter (both PM2.5 and PM10), ozone (O3), nitrogen dioxide (NO2), and sulfur dioxide (SO2) to reflect the National Ambient Air Quality Standards (NAAQS), definitional changes, and regulatory consolidation. EPA is proposing to approve these portions of the SIP revisions because the Commonwealth has demonstrated that these changes are consistent with the Clean Air Act (CAA or Act). EPA will act on the other portions of

KDAQ's March 22, 2011, and May 3, 2012, submittals in a separate action.

DATES: Written comments must be received on or before August 31, 2016.

#### EPA, Amendments to Regional Consistency Regulations

**Final rule.** The Environmental Protection Agency (EPA) is promulgating revisions to its Regional Consistency regulations to more clearly address the implications of adverse federal court decisions that result from challenges to locally or regionally applicable actions. Specifically, the EPA is introducing a narrow procedural exception under which an EPA Regional office no longer needs to seek Headquarters concurrence to diverge from national policy in geographic areas covered by such an adverse court decision. The revisions will help to foster overall fairness and predictability regarding the scope and impact of judicial decisions under the Clean Air Act (CAA or Act).

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

#### EPA, Air Plan Approval; Kentucky; Removal of Stage II Gasoline Vapor Recovery Program

**Proposed rule.** The Environmental Protection Agency (EPA) is proposing to approve changes to the Kentucky State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky through its Energy and Environment Cabinet (EEC) on May 3, 2016. This SIP revision seeks to remove Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in the State and allow for the decommissioning of existing Stage II equipment in Boone, Campbell and Kenton Counties in

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Kentucky. EPA has preliminarily determined that Kentucky's May 3, 2016, SIP revision is approvable because it is consistent with the Clean Air Act (CAA or Act).

DATES: Written comments must be received on or before September 16, 2016.

**[EPA, Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements](#)**

**Final rule.** The Environmental Protection Agency (EPA) is finalizing requirements that state, local and tribal air agencies would have to meet as they implement the current and future national ambient air quality standards (NAAQS) for fine particulate matter (PM2.5). Specifically, this document provides details on meeting the statutory state implementation plan (SIP) requirements that apply to areas designated nonattainment for any PM2.5 NAAQS, such as: General requirements for attainment plan due dates and attainment dates; emissions inventories; attainment demonstrations; provisions for demonstrating reasonable further progress; quantitative milestones; contingency measures; and nonattainment New Source Review (NNSR) permitting programs, among other things. This rule clarifies the specific attainment planning requirements that apply to PM2.5 NAAQS nonattainment areas based on their classification (either Moderate or Serious), and the process for reclassifying Moderate areas to Serious. Additionally, in this document the EPA is revoking the 1997 primary annual standard for areas designated as attainment for that standard because the EPA revised the primary annual standard in 2012. The EPA first established the

PM2.5 NAAQS in 1997, completed a review and revision of those standards in 2006, and most recently completed a review and revision of the PM2.5 NAAQS on December 14, 2012.

DATES: This final rule is effective on October 24, 2016.

**[EPA, Air Plan Approval; Indiana; RACM Determination for Indiana Portion of the Cincinnati-Hamilton 1997 Annual PM2.5 Nonattainment Area](#)**

**Direct Final Rule.** The Environmental Protection Agency (EPA) is approving the reasonably available control measures (RACM) and reasonably available control technology (RACT) analysis that Indiana submitted as part of its attainment plan for the 1997 fine particulate matter (PM2.5) standard, in accordance with Indiana's request dated February 11, 2016. The RACM/RACT analysis addresses RACM and RACT for the Indiana portion of the Cincinnati-Hamilton nonattainment area for the 1997 PM2.5 standard. EPA is not acting on the portions of the State Implementation Plan (SIP) submission that are unrelated to RACM/RACT. Other portions of the attainment plan have either been addressed or will be addressed in future rulemaking actions. DATES: This direct final rule will be effective October 24, 2016, unless EPA receives adverse comments by September 26, 2016.

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

**Final rule.** The Environmental Protection Agency (EPA) is approving a State Implementation Plan (SIP) revision submitted by the Commonwealth of

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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: This rule will be effective September 29, 2016.

## WASTE

### [EPA, Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills](#)

**Final rule.** The Environmental Protection Agency (EPA) is finalizing a new subpart that updates the Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills (Emission Guidelines). The EPA reviewed the landfills Emission Guidelines based on changes in the landfills industry since the Emission Guidelines were promulgated in 1996. The EPA's review of the Emission Guidelines for municipal solid waste (MSW) landfills considered landfills that accepted waste after November 8, 1987, and commenced construction, reconstruction, or modification on or before July 17, 2014. Based on this review, the EPA has determined that it is appropriate to revise the Emission Guidelines to reflect changes to the population of landfills and the results of an analysis of the timing and methods for reducing emissions. This action will achieve additional reductions in emissions of landfill gas and its components, including methane, by

lowering the emissions threshold at which a landfill must install controls. This action also incorporates new data and information received in response to an advanced notice of proposed rulemaking and a proposed rulemaking and addresses other regulatory issues including surface emissions monitoring, wellhead monitoring, and the definition of landfill gas treatment system. The revised Emission Guidelines, once implemented through revised state plans or a revised federal plan, will reduce emissions of landfill gas, which contains both nonmethane organic compounds and methane. Landfills are a significant source of methane, which is a potent greenhouse gas pollutant. These avoided emissions will improve air quality and reduce the potential for public health and welfare effects associated with exposure to landfill gas emissions.

DATES: This final rule is effective on October 28, 2016.

### [EPA, Standards of Performance for Municipal Solid Waste Landfills](#)

**Final rule.** The Environmental Protection Agency (EPA) is finalizing a new subpart that updates the Standards of Performance for Municipal Solid Waste Landfills. Under section 111 of the Clean Air Act, the EPA must review, and, if appropriate, revise standards of performance at least every 8 years. The EPA's review of the standards for municipal solid waste landfills considered landfills that commence construction, reconstruction, or modification after July 17, 2014. The final standards also reflect changes to the population of landfills and an analysis of the timing and methods for reducing emissions. This action will

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achieve additional reductions in emissions of landfill gas and its components, including methane, by lowering the emissions threshold at which a landfill must install controls. This action also incorporates new data and information received in response to the proposed rulemaking and addresses other regulatory issues including surface emissions monitoring, wellhead monitoring, and the definition of landfill gas treatment system. The new subpart will reduce emissions of landfill gas, which contains both nonmethane organic compounds and methane. Landfills are a significant source of methane, which is a potent greenhouse gas pollutant. These avoided emissions will improve air quality and reduce the potential for public health and welfare effects associated with exposure to landfill gas emissions.

**DATES:** This final rule is effective on October 28, 2016.

**EPA, [Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Collection of Information on Anaerobic Digestion Facilities Processing Wasted Food To Support EPA's Sustainable Food Management Programs \(New\)](#)**

**Notice.** The Environmental Protection Agency has submitted an information collection request (ICR), "Collection of Information on Anaerobic Digestion Facilities Processing Wasted Food to Support EPA's Sustainable Food Management Programs (New)" (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.). This is a

request for approval of a new collection. Public comments were previously requested via the Federal Register (81 FR 10856) 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 September 28, 2016.

## **OTHER**

**US Fish and Wildlife. [Endangered and Threatened Wildlife and Plants; Amending the Formats of the Lists of Endangered and Threatened Wildlife and Plants](#)**

**Final rule.** The U.S. Fish and Wildlife Service, amend the format of the Lists of Endangered and Threatened Wildlife and Plants (Lists) to reflect current practices and standards that will make the regulations and Lists easier to understand. The Lists, in the new format, are included in their entirety and have been updated to correct identified errors.

**DATES:** This rule is effective August 4, 2016.

**BSSE, [Information Collection Activities: Oil and Gas Production Measurement, Surface Commingling, and Security; Submitted for Office of Management and Budget \(OMB\) Review; Comment Request 30-Day notice.](#)** To comply with the Paperwork Reduction Act of 1995 (PRA), the Bureau of Safety and Environmental

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Enforcement (BSEE) is notifying the public that it has submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under Subpart L, Oil and Gas Production Measurement, Surface Commingling, and Security. This notice also provides the public a second opportunity to comment on the revised paperwork burden of these regulatory requirements.

DATE: You must submit comments by September 9, 2016.

**OSHA, [Confined Spaces in Construction: Approval of Collections of Information](#)**

**Final rule.** This rule is a technical amendment revising OSHA's regulations to reflect the approval by the Office of Management and Budget (OMB) of the collections of information contained in OSHA's standard for Confined Spaces in Construction.

DATES: Effective August 12, 2016.

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