



SMG Reg Watch

September 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

On September 14, the US Senate passed the [Water Resources Development Act \(WRDA\)\(S.2848\)](#). The legislation would authorize a grant program to assist small and disadvantaged communities to comply with requirements under the **Safe Drinking Water Act**; priority is given to communities without basic drinking water or wastewater services. (US\$1.4B). The Bill would also authorize a grant program

for the replacement of service lines, testing, planning, corrosion control and education concerning lead infrastructure. (US\$300M).

Among other things, the Bill would reauthorize grants for addressing combined sewer overflows, sanitary sewer overflows and stormwater discharges (US\$1.8B). Other funding areas include a voluntary lead exposure registry to be used by any city whose citizens are exposed to lead contamination in drinking water; establish a drinking water technology clearinghouse to provide information on cost effective, innovative and alternative drinking water delivery systems. The Bill would authorize the Corps of Engineers to provide technical assistance to non-federal sponsors that are developing their own feasibility studies and to accept funds, materials and services from states and local governments to carry out water resources projects. The Bill also authorizes US\$435 million over the next 10 years for a federal Emergency Management Agency (FEMA) program for rehabilitation of high hazard potential dams. Specific project authorizations or modifications for Kentucky include the Green and Barren Rivers, Kentucky Navigation Final Feasibility Study, Ohio River Shoreline, Paducah, Kentucky Project Modification.

The big question will be, how much of this Bill will the House be willing to swallow? The program would allocate big bucks to

cover at least some issues that are past due for some attention.

The Corps of Engineers proposed in the [June 1st Federal Register](#) to reissue and modify its **Nationwide Permits**. A Nationwide Permit is a general permit that provides standing permission for all activities that fit the description in the permit. The other Corps permit is the individual Clean Water Act 404 permit that authorizes specific activities on a case by case basis.

The [Associated General Contractors](#) (AGC) of America submitted their comments on the proposed permits. This organization represents firms in the building, industrial, utility and other construction related industries. Their [comments](#) are an indication of how the proposed rules would impact these industries.

AGC feels it is important to maintain a streamlined permit program that avoids duplication with other federal and state regulatory agencies. AGC wants the Corps to consider increasing the permissible numeric acreage limits for Pre-Construction Notification Thresholds. They also have requested that the Corps not to broaden the reach of its Clean Water Act Jurisdiction (WOTUS Rule). AGC expressed concern that there is a wide variation in interpretation of the Nationwide Permit program. AGC has offered recommendations in the interest of making regional conditioning more positive to the construction industry including standard operating procedures and conflict resolution process.

FEMA [published a notice](#) in the August 22nd Federal Register proposing to update its Floodplain Management and Protection of Wetlands Regulations. Many have expressed concern that these requirements (if finalized) would raise costs for actions involving the use of FEMA federal funds for new construction, substantial improvements or to address substantial damage to a structure or facility. For Federally Funded Project it proposes to use the updated definition of “floodplain”. Under the proposed rules FEMA will define “floodplain” using any of three “approaches”. Each approach would result in a larger floodplain and requirements to design projects such that they are resilient to a higher vertical elevation.

The Office of Inspector General for the USEPA announced on August 29th [plans to begin preliminary research to evaluate the federal agency’s oversight of state drinking water monitoring](#). The OIG intends to conduct initial work at EPA headquarters as well as in selected regions and states.

In a recent case, [Commonwealth of Pennsylvania Dept of Environmental Protection v. Trainer Custom Chemical](#), F. Supp. 3rd, 2016WL4525451, the District Court for the Eastern District of Pennsylvania found that a current owner of contaminated property is not liable under Section 107(a)(1) of **CERCLA** for cleanup costs incurred prior to ownership. The case limits current owner liability under CERCLA to only those costs incurred after the owner takes title to the contaminated site. The court noted that

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although CERCLA imposes strict liability, it does not impose limitless liability.

In a further expansion of EPA’s power, on September 12, 2016 the agency issued a [strategy for addressing the application of the federal hazardous waste regulations under RCRA to the retail sector](#). While increasing enforcement potential on the industry, the rule also points out it plans to finalize the *Pharmaceuticals and Generator Improvements* rules to be finalized in the coming months. Other activities include a Proposed Rule for Aerosol Cans as Universal Waste, Guide to Recycling Aerosol Cans and Policy on Reverse Distribution.

On September 22, 2016, US Fish and Wildlife Service [proposed to list the rusty patched bumble bee](#) as an **endangered species**. If you think about it, the bat listings are taking projects out of the woodlands and pushing them toward more open areas. This listing, when finalized, would make it more difficult for projects going through open areas with bee habitat. Do you think there is a strategy here?

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:

- [Section 176A, the Ozone Transport Region, and Kentucky](#)
- [DOT HazMat Proposed Rule](#)
- [Are You Ready for a Waste Management Inspection? Is Your Documentation in Order?](#)

- [Gold King Mine Added to Superfund National Priorities List](#)
- [The "White Fringeless Orchid" is Added to the Endangered Species List in Kentucky](#)
- [EPA Moving in on Retail](#)
- [Detailed Re-evaluation of Local Limits](#)

Federal Regulation Review

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AIR

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](#)

Final rule. The Environmental Protection Agency (EPA) is granting Indiana’s request to redesignate, under the Clean Air Act (CAA), the state of Indiana portion of the Louisville (KY-IN) (Madison Township in Jefferson County and Clark and Floyd Counties) nonattainment area to attainment of the 1997 annual standard for fine particulate matter (PM2.5). EPA determined that the Louisville area has attained the 1997 annual standard, and proposed on July 11, 2013, with a supplemental proposal on June 23, 2016, to approve Indiana’s request to redesignate the area. EPA is taking final

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action today on the proposal and supplemental proposal. EPA is also taking final action in this rulemaking on several related proposals. Along with granting the change in the area's designation status, EPA is also approving Indiana's PM2.5 maintenance plan for the Louisville area as a revision to the Indiana state implementation plan (SIP) as meeting the requirements of section 175A of the CAA. EPA is approving the 2008 emissions inventory for primary PM2.5, nitrogen oxides (NOX), sulfur dioxide (SO2), volatile organic compounds (VOC) and ammonia as satisfying the requirement of the CAA for a comprehensive, current emission inventory. Finally, EPA finds adequate and is approving 2015 and 2025 primary PM2.5 and NOX motor vehicle emissions budgets (MVEBs) for the Louisville area. These MVEBs will be used in future transportation conformity analyses for the area. These actions were proposed for approval in EPA's initial action on July 11, 2013. EPA received no comments in response to the above proposals.

DATES: This final rule is effective on September 9, 2016.

EPA, [National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers](#)

Final rule; notice of final action on reconsideration. This action sets forth the Environmental Protection Agency's (EPA's) final decision on the issues for which it announced reconsideration on January 21, 2015, that pertain to certain aspects of the February 1, 2013, final amendments to the "National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and

Institutional Boilers" (Area Source Boilers Rule). The EPA is retaining the subcategory and separate requirements for limited-use boilers, consistent with the February 2013 final rule. In addition, the EPA is amending three reconsidered provisions regarding: The alternative particulate matter (PM) standard for new oil-fired boilers; performance testing for PM for certain boilers based on their initial compliance test; and fuel sampling for mercury (Hg) for certain coal-fired boilers based on their initial compliance demonstration, consistent with the alternative provisions for which comment was solicited in the January 2015 proposal. The EPA is making minor changes to the proposed definitions of startup and shutdown based on comments received. This final action also addresses a limited number of technical corrections and clarifications on the rule, including removal of the affirmative defense for malfunction in light of a court decision on the issue. These corrections will clarify and improve the implementation of the February 2013 final Area Source Boilers Rule. In this action, the EPA is also denying the requests for reconsideration with respect to the issues raised in the petitions for reconsideration of the final Area Source Boilers Rule for which reconsideration was not granted.

DATES: This final rule is effective on September 14, 2016.

EPA, [Release of Draft Policy Assessment for the Review of the Primary National Ambient Air Quality Standards for Nitrogen Dioxide](#)

Notice of availability. The Environmental Protection Agency (EPA) is reviewing the primary National Ambient Air Quality

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Standards (NAAQS) for Nitrogen Dioxide (NO₂). On or about September 23, 2016, the EPA will make available for public review the document titled Policy Assessment for the Review of the Primary National Ambient Air Quality Standards for Nitrogen Dioxide— External Review Draft (draft PA). This draft PA is intended to facilitate the Clean Air Scientific Advisory Committee's (CASAC's) advice and public input as part of the ongoing review of the primary NAAQS for NO₂.

DATES: Comments should be received on or before December 8, 2016.

EPA, [Adequacy Status of the ClevelandAkron-Lorain and Columbus, Ohio Areas and the Ohio and Indiana Portions of the Cincinnati IndianaOhio-Kentucky Area Submitted 8-Hour Ozone Redesignation Requests and Maintenance Plans for Transportation Conformity Purposes](#)

Notice of adequacy. In this notice, the Environmental Protection Agency (EPA) is notifying the public that we have found that the motor vehicle emissions budgets (MVEBs) for volatile organic compounds (VOCs) and oxides of nitrogen (NO_x) in the Cleveland-AkronLorain and Columbus, Ohio ozone nonattainment areas, and the Indiana and Ohio portions of the Cincinnati Indiana-Ohio-Kentucky ozone nonattainment area are adequate for use in transportation conformity determinations under the Clean Air Act (CAA). Ohio submitted redesignation requests and maintenance plans for the Cleveland-Akron-Lorain and Columbus areas on July 6, 2016 and June 16, 2016, respectively. Ohio submitted a redesignation request and maintenance plan for the Ohio portion of the Cincinnati

area on April 21, 2016. Indiana submitted a redesignation request and maintenance plan for the Indiana portion of the Cincinnati area on February 23, 2016. As a result of our finding, these areas must use their submitted MVEBs for future transportation conformity determinations.

DATES: This finding is effective October 12, 2016.

EPA, [Air Plan Approval; Ohio; Redesignation of the Ohio Portion of the Cincinnati-Hamilton, OhioKentucky-Indiana Area to Attainment of the 2008 Ozone Standard](#)

Proposed rule. The Environmental Protection Agency (EPA) is proposing to find that the Cincinnati-Hamilton, OhioKentucky-Indiana area is attaining the 2008 8-hour ozone National Ambient Air Quality Standard (NAAQS or standard) and to approve a request from the Ohio Environmental Protection Agency (Ohio EPA) to redesignate the Ohio portion of the Cincinnati-Hamilton area to attainment for the 2008 ozone NAAQS because the request meets the statutory requirements for redesignation under the Clean Air Act (CAA or Act). The Cincinnati-Hamilton area includes Butler, Clermont, Clinton, Hamilton, and Warren Counties in Ohio; Lawrenceburg Township in Dearborn County, Indiana; and, Boone, Campbell, and Kenton Counties in Kentucky. Ohio EPA submitted this request on April 21, 2016. EPA is also proposing to approve, as a revision to the Ohio State Implementation Plan (SIP), the state's plan for maintaining the 2008 8-hour ozone standard through 2030 in the Cincinnati-Hamilton area. Finally, EPA finds adequate and is proposing to approve the state's

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2020 and 2030 volatile organic compound (VOC) and oxides of nitrogen (NOX) Motor Vehicle Emission Budgets (MVEBs) for the Ohio and Indiana portion of the Cincinnati-Hamilton area.

DATES: Comments must be received on or before October 28, 2016.

EPA, [Availability of Data on Allocations of Cross-State Air Pollution Rule Allowances to Existing Electricity Generating Units](#)

Final rule; notice of data availability (NODA). Under the Cross-State Air Pollution Rule (CSAPR) trading program regulations, the EPA allocates emission allowances to existing electricity generating units (EGUs) as provided in a notice of data availability (NODA). In the CSAPR Update promulgated earlier this year, the EPA finalized default allocations of CSAPR NOX Ozone Season Group 2 allowances for the control periods in 2017 and subsequent years to existing EGUs in 22 eastern states for which the EPA finalized Federal Implementation Plans (FIPs)— Alabama, Arkansas, Illinois, Indiana, Iowa, Kansas, **Kentucky**, Louisiana, Maryland, Michigan, Mississippi, Missouri, New Jersey, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Virginia, West Virginia, and Wisconsin. Through this NODA, the EPA is providing notice of the availability of data on these allowance allocations to existing units, as well as the data upon which the allocations are based.

DATES: September 30, 2016.

EPA, [Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Information Collection Effort for Oil and Gas Facilities](#)

Notice. The Environmental Protection Agency (EPA) has submitted an information collection request (ICR), “Information Collection Effort for Oil and Gas Facilities” (EPA ICR No. 2548.01, OMB Control No. 2060—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 35763) on June 3, 2016, during a 60-day comment period. This notice allows for an additional 30 days for public comments. A complete description of the ICR is provided 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 October 31, 2016.

WATER

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

Direct final rule. The Environmental Protection Agency (EPA) is taking direct final action to extend the implementation deadline for certain facilities subject to the final rule establishing pretreatment standards under the Clean Water Act (CWA) for discharges of pollutants into publicly owned treatment works (POTWs) from onshore unconventional oil and gas (UOG) extraction facilities (81 FR 41845; June 28, 2016). EPA is making

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this revision in response to new information suggesting that there are likely facilities subject to the final rule not presently meeting the zero discharge requirements in the final rule.

DATES: This direct final rule is effective on November 29, 2016 without further notice, unless EPA receives adverse comment by October 31, 2016.

WASTE

Pipeline and Hazardous Materials Safety Administration, DOT. [Hazardous Materials: Harmonization With International Standards \(RRR\)](#)

Notice of proposed rulemaking: The Pipeline and Hazardous Materials Safety Administration (PHMSA) proposes to amend the Hazardous Materials Regulations (HMR) to maintain consistency with international regulations and standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements. These revisions are necessary to harmonize the HMR with recent changes made to the International Maritime Dangerous Goods Code, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the United Nations Recommendations on the Transport of Dangerous Goods—Model Regulations. Additionally, PHMSA proposes several amendments to the HMR that result from coordination with Canada under the U.S.-Canada Regulatory Cooperation Council.

DATES: Comments must be received by November 7, 2016.

OTHER

Fish and Wildlife Service. [Endangered and Threatened Wildlife and Plants; Endangered Species Act Compensatory Mitigation Policy](#)

Announcement of draft policy; request for public comment. The U.S. Fish and Wildlife Service, announce the draft Endangered Species Act (ESA) Compensatory Mitigation Policy. The draft new policy is needed to implement recent Executive Office and Department of the Interior mitigation policies that necessitate a shift from project-by-project to landscape-scale approaches to planning and implementing compensatory mitigation. The draft new policy is also needed to improve consistency in the use of compensatory mitigation as recommended or required under the ESA. The draft ESA Compensatory Mitigation Policy, if adopted, would cover permittee-responsible mitigation, conservation banking, in-lieu fee programs, and other third-party mitigation mechanisms, and would stress the need to hold all compensatory mitigation mechanisms to equivalent and effective standards. The Service requests comments, information, and recommendations on the draft new policy from all interested parties.

DATES: The Service will accept comments on the draft policy from all interested parties until October 17, 2016.

Occupational Safety and Health Administration (OSHA), [Access to Employee Exposure and Medical Records; Extension of the Office of Management and](#)

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[Budget's \(OMB\) Approval of 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 Access to Employee Exposure and Medical Records Standard (29 CFR 1910.1020).

DATES: Comments must be submitted (postmarked, sent, or received) by November 14, 2016.

Fish and Wildlife Service, [Endangered and Threatened Wildlife and Plants; Threatened Species Status for *Platanthera integrilabia* \(White Fringeless Orchid\)](#)

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 *Platanthera integrilabia* (white fringeless orchid), a plant species from Alabama, Georgia, **Kentucky**, Mississippi, South Carolina, and Tennessee. This rule adds this species to the Federal List of Endangered and Threatened Plants.

DATES: This rule is effective October 13, 2016.

Fish and Wildlife Service, [Endangered and Threatened Wildlife and Plants; Endangered Species Status for Rusty Patched Bumble Bee](#)

Proposed rule. The U.S. Fish and Wildlife Service (Service), announces a 12-month finding on a petition to list the rusty patched bumble bee (*Bombus affinis*) as endangered or threatened under the Endangered Species Act, as amended (Act). After review of the best available scientific and commercial information, the

Service finds that listing the rusty patched bumble bee is warranted. Accordingly, the Service proposes to list the rusty patched bumble bee, a species that occurs in the eastern and midwestern United States and Ontario, Canada, as an endangered species under the Endangered Species Act (Act). If the Service finalizes this rule as proposed, it would extend the Act's protections to this species. The effect of this regulation will be to add this species to the List of Endangered and Threatened Wildlife. **DATES:** The Service will accept comments received or postmarked on or before November 21, 2016.

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