



## SMG Reg Watch

October 2016 / Scott R. Smith and Kori J. Andrews

Reg Watch is a periodic summary of regulations that we are currently tracking. The regulations we watch address energy, environmental, health, safety, educational issues relating to sustainability and public utilities.

This is not an all-encompassing list of all regulations being considered at the state or federal level. Contact me if you want to add additional issues, need copies of the proposed or final regulations or have questions about these or other regulations you've heard about.

### DO YOU KNOW SOMEONE WHO WANTS TO RECEIVE THESE UPDATES?

Contact us at  
[scottr.smith@smithmanage.com](mailto:scottr.smith@smithmanage.com).

### QUESTIONS, COMMENTS, ADDITIONAL INFORMATION

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### Scott's Thoughts

The **political developments** last week far overshadow the development of regulations at the state and federal level but I will attempt to provide you information on both fronts.

The ***election of Donald Trump as President*** is unexpected. It will be interesting to see how his plans for the Clean Power Plan, Paris climate agreement, and the oil and gas and coal industries unfold. I expect to see him

reverse many of the climate policies and begin to reverse many of the environmental regulations established by President Obama that we have discussed in this column over the past 8 years. He can quickly strike down the many Presidential Executive Orders and approve the Canadian Pipeline that would put thousands of people to work. There may also be opportunities during the next session of Congress to advance changes regarding environmental laws. We'll keep you posted on these.

***Kentucky's political changes*** may be bigger than the election of Donald Trump. For the first time in 95 years there will be more Republicans than Democrats in the Kentucky House of Representatives. Now, Republicans in Kentucky control the House and Senate and the Governor's office. Expect job creating policies that will focus on economic growth. Expect there to be a focus on Right to Work legislation, Prevailing Wage, and Charter Schools to name a few. There will be tax reform, but I'm hearing is that issue will be the focus of a special session later in 2017.

Now for the **regulatory activity**.

EPA has developed a **new strategy for addressing the retail sector under RCRA**. EPA's going-forward strategy uses a three-pronged approach: (1) issue Agency policy, guidance, and rulemaking to ensure a better fit between RCRA regulations and the retail sector; (2) research retail hazardous waste management practices and related issues for reverse distribution procedures, universal waste management, and other challenges; (3)

using the results of that evaluation and research, identify additional approaches to address outstanding RCRA retail sector issues if needed. In the near term, EPA intends to focus efforts on finalizing the related *Pharmaceuticals and Generator Improvement* rules. Don't wait for EPA's guidance before you start. They are writing violations now. Start with your policy review and then fill the gaps with common sense policies and direction to your employees.

Keep an eye out for the revisions to the [Hazardous Waste Generator regulations](#). Revisions to definitions, hazardous waste identification requirements and hazardous waste generator standards could impact facility's that generate hazardous waste.

EPA is updating its [Refrigerant Management Regulations](#). They are revising the existing safe handling and management requirements that are currently applicable only to ozone depleting substances and extending them to substitute refrigerants such as hydrofluorocarbons. The agency will also tighten certain provisions to include more stringent leak inspection and repair requirements and recordkeeping and reporting requirements. The rule is planned to become effective January 1, 2017.

EPA published a proposed rule October 3, 2016 to [revise the permitting rules for Greenhouse Gas emissions under the Clean Air Act](#). The proposed rule would set the Significant Emissions Rate for GHGs at 75,000 tons of CO2 per year. This is worth a read. Comments are due December 2, 2016.

EPA has released their final [Control Techniques Guidelines for reducing volatile organic compound emissions from existing oil and natural gas equipment and](#)

[processes](#). The guidelines represent EPA's Reasonably Available Control Technology recommendations for reducing VOC emissions from existing sources. While EPA may characterize the CTGs as voluntary, they are anything but voluntary.

The U.S. Environmental Protection Agency proposes to approve the Commonwealth of *Kentucky Underground Injection Control (UIC) Class II Program* for primacy. Comments are due November 28. Don't assume this is a done deal. If you agree with this rulemaking get your positive comments in before the deadline. Those that won't like this, will definitely let EPA know their views.

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:

- [SMG Presents to KOGA on Quad Oa Compliance](#)
- [Vapor Intrusion-Revisions to the Superfund National Priorities List-Hazard Ranking System](#)
- [STEM Education](#)
- [Going "Brown" to Power Our Cars](#)
- [Rusty Patched Bumble Bee Proposed Endangered Species](#)
- [Brownfield Success Story - Economic Alliance takes empty manufacturing to productive warehouse](#)
- [Kentucky DAQ Air Emissions Invoices](#)
- [Josiah Frey earns Certified Wetland Botanist credential](#)
- [Kentucky Arrow Darter Listed as Threatened](#)

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- [EPA to Remove “Emergency” Affirmative Defense Provisions from Title V Permits](#)
- [Local Limits: Collection System Concerns](#)
- [Control Techniques Guidelines \(CTG\) for the Oil and Natural Gas Industry](#)
- [EPA's Environmental Justice Strategic Plan is Released](#)

### State Regulation Review

The Division of Waste Management has promulgated the following Kentucky administrative regulations filed October 11, 2016:

- 401 KAR 45:010 (amendment);
- 401 KAR 45:060 (amendment);
- 401 KAR 4:070 (new administrative regulation);
- 401 KAR 46:101 (new administrative regulation);
- 401 KAR 46:110 (new administrative regulation); and
- 401 KAR 46:120 (new administrative regulation).

Official copies of the proposed amendments and new administrative regulations may be found on LRC’s website at <http://www.lrc.ky.gov>.

The public comment period will extend through **November 30, 2016**. The Division of Waste Management respectfully requests that affected individuals, businesses, or other entities submit written comments.

The public hearing on these administrative regulations will be held on **November 22, 2016**, at 6:00 p.m. (Eastern Time) at 300 Sower Blvd., 1st Floor, Training Room C,

Frankfort, KY 40601. If you would like to be heard at this hearing, please notify Louanna Aldridge by November 15, 2016. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation.

Similarly, Division of Water, in conjunction with Division of Waste Management, has proposed an administrative regulation (401 KAR 4:070 Coal combustion residual surface impoundments).

The Division of Water filed this proposed regulation with the Legislative Research Commission (LRC) on October 11, 2016 and anticipates that it will be published in the Kentucky Administrative Register on November 1, 2016, and available on the LRC website at <http://www.lrc.ky.gov/kar/frntpage.htm>.

The regulation will also be available on the Division of Water website at <http://water.ky.gov/Pages/RegsInProgress.aspx>.

A public hearing to receive comments on the newly proposed regulation is scheduled for Tuesday, November 22, 2016 at 6 p.m. at 300 Sower Boulevard, 1<sup>st</sup> Floor, Training Room C, Frankfort, Kentucky 40601. If the Division of Water does not receive any written requests for testimony at least five days prior to the hearing, the hearing may be cancelled.

The Division of Water requests that affected individuals, businesses, or other entities submit written comments that identify the anticipated effects of the proposed administrative regulation. **Written comments will be accepted through November 30, 2016.** Please send written comments

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to: Carole Catalfo, Esq., Internal Policy Analyst, RPPS, Division of Water, 300 Sower Boulevard, 3<sup>rd</sup> Floor, Frankfort, KY 40601, or by email to: [water@ky.gov](mailto:water@ky.gov) (Subject line: CCR Surface Impoundments).

The Finance and Administration Cabinet has amended and finalized [103 KAR 8:160](#), Valuation of municipal solid waste landfills.

**Federal Regulation Review**

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**AIR**

**EPA, [Revisions to the Prevention of Significant Deterioration \(PSD\) and Title V Greenhouse Gas \(GHG\) Permitting Regulations and Establishment of a Significant Emissions Rate \(SER\) for GHG Emissions Under the PSD Program](#)**

**Proposed rule.** The Environmental Protection Agency (EPA) is proposing to revise provisions applicable to greenhouse gases (GHG) in the EPA’s Prevention of Significant Deterioration (PSD) and title V permitting regulations. This action is in response to the June 23, 2014, U.S. Supreme Court’s decision in Utility Air Regulatory Group (UARG) v. EPA and the April 10, 2015, Amended Judgment by the United States Court of Appeals for the District of Columbia Circuit

(D.C. Circuit) in Coalition for Responsible Regulation v. EPA. The proposed PSD and title V revisions involve changes to several regulatory definitions in the PSD and title V regulations, revisions to the PSD provisions on GHG Plantwide Applicability Limitations (PALs), and revisions to other provisions necessary to ensure that neither the PSD nor title V rules require a source to obtain a permit solely because the source emits or has the potential to emit (PTE) GHGs above the applicable thresholds. In addition, the EPA is also proposing a significant emissions rate (SER) for GHGs under the PSD program that would establish an appropriate threshold level below which Best Available Control Technology (BACT) is not required for a source’s GHG emissions. **DATES:** Comments must be received on or before December 2, 2016.

**EPA, [Clarification of Reconsideration of the Oil and Natural Gas Sector: New Source Performance Standards; Final Action](#)**

**Notice of supplemental action denying petitions for reconsideration.** The U.S. Environmental Protection Agency (EPA) is providing notice that it has clarified the scope of its July 29, 2016, response to petitions for reconsideration of the 2012 final rule titled “Oil and Natural Gas Sector: New Source Performance Standards and National Emission Standards for Hazardous Air Pollutants Reviews” and the subsequent amendments published in the Federal Register on September 23, 2013, and December 31, 2014. The EPA has sent a letter to each of the petitioners clarifying that the July 29, 2016, action denied the above mentioned petitions only with respect to the issues related to the new

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source performance standards (NSPS), and was not intended to include denial of reconsideration of any issue relative to the 2012 action on the national emission standards for hazardous air Pollutants (“2012 NESHAP”). The letters further state that, to the extent the July 29, 2016, action may be construed to have denied reconsideration of issues relative to the 2012 NESHAP, the follow-up letters supersede that previous action on NESHAP-related matters.

**DATES:** Effective October 4, 2016.

**EPA, [Air Plan Approval; KY; Removal of Stage II Gasoline Vapor Recovery Program](#)**

**Final rule.** The Environmental Protection Agency (EPA) is approving changes to the Kentucky State Implementation Plan (SIP) submitted by the Commonwealth of Kentucky, through the Kentucky Energy and Environmental Cabinet, on May 3, 2016. This SIP revision removes Stage II vapor control requirements for new and upgraded gasoline dispensing facilities in the State and allows for the decommissioning of existing Stage II equipment in Boone, Campbell and Kenton Counties in Kentucky (hereinafter referred to as the “Northern Kentucky Area” or “Area”). EPA determined that Kentucky’s May 3, 2016, SIP revision is approvable because it is consistent with the Clean Air Act (CAA or Act).

**DATES:** This rule will be effective November 14, 2016.

**EPA, [Review of the National Ambient Air Quality Standards for Lead](#)**

**Final rule.** Based on the Environmental Protection Agency’s (EPA’s) review of the air quality criteria and the national ambient air quality standards (NAAQS) for

lead (Pb), the EPA is retaining the current standards, without revision.

**DATES:** This final rule is effective on November 17, 2016.

**EPA, [Air Plan Approval; KY; RACM Determination for the KY Portion of the Louisville Area 1997 Annual PM2.5](#)**

**Proposed rule.** The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ) on August 9, 2016, that addresses reasonably available control measures (RACM) for the Kentucky portion of the Louisville, KY-IN, nonattainment area for the 1997 Annual fine particulate matter (PM2.5) National Ambient Air Quality Standards (NAAQS) (hereinafter referred to as the “bi-state Louisville Area” or “Area”).

**DATES:** Comments must be received on or before November 21, 2016.

**EPA, [Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS](#)**

**Final rule.** The Environmental Protection Agency (EPA) published the original Cross-State Air Pollution Rule (original CSAPR) on August 8, 2011, to address interstate transport of ozone pollution under the 1997 ozone National Ambient Air Quality Standards (NAAQS) and interstate transport of fine particulate matter (PM2.5) pollution under the 1997 and 2006 PM2.5 NAAQS. The EPA is finalizing this Cross-State Air Pollution Rule Update (CSAPR Update) to address interstate transport of ozone pollution with respect to the 2008 ozone NAAQS. This final rule will benefit human health and welfare by reducing groundlevel

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ozone pollution. In particular, it will reduce ozone season emissions of oxides of nitrogen (NOX) in 22 eastern states that can be transported downwind as NOX or, after transformation in the atmosphere, as ozone, and can negatively affect air quality and public health in downwind areas. For these 22 eastern states, the EPA is issuing Federal Implementation Plans (FIPs) that generally provide updated CSAPR NOX ozone season emission budgets for the electric generating units (EGUs) within these states, and that implement these budgets via modifications to the CSAPR NOX ozone season allowance trading program that was established under the original CSAPR. The EPA is finalizing these new or revised FIP requirements only for certain states that have failed to submit an approvable State Implementation Plan (SIP) addressing interstate emission transport for the 2008 ozone NAAQS. The FIPs require affected EGUs in each covered state to reduce emissions to comply with program requirements beginning with the 2017 ozone season (May 1 through September 30). This final rule partially addresses the EPA's obligation under the Clean Air Act to promulgate FIPs to address interstate emission transport for the 2008 ozone NAAQS. In conjunction with other federal and state actions to reduce ozone pollution, these requirements will assist downwind states in the eastern United States with attaining and maintaining the 2008 ozone NAAQS. This CSAPR Update also is intended to address the July 28, 2015 remand by the United States Court of Appeals for the District of Columbia Circuit of certain states' original CSAPR phase 2 ozone season NOX emission budgets. In addition, this rule updates the status of certain

states' outstanding interstate ozone transport obligations with respect to the 1997 ozone NAAQS, for which the original CSAPR provided a partial remedy.

**DATES:** This final rule is effective on December 27, 2016.

**EPA, [Release of Final Control Techniques Guidelines for the Oil and Natural Gas Industry](#)**

**Notice of availability.** The Environmental Protection Agency (EPA) is announcing the availability of a final document titled, "Control Techniques Guidelines for the Oil and Natural Gas Industry" (EPA 453/B-16-001). This Control Techniques Guidelines (CTG) document provides state, local, and tribal air agencies (air agencies) information to assist them in determining reasonably available control technology (RACT) for volatile organic compound (VOC) emissions from select oil and natural gas industry emission sources.

**DATES:** This CTG document is effective October 27, 2016.

## WATER

**EPA, [Commonwealth of Kentucky Underground Injection Control \(UIC\) Class II Program; Primacy Approval](#)**

**Proposed rule.** The U.S. Environmental Protection Agency (EPA) proposes to approve the Commonwealth of Kentucky Underground Injection Control (UIC) Class II Program for primacy. The EPA determined that the state's program is consistent with the provisions of the Safe Drinking Water Act (SDWA) at section 1425 to prevent underground injection activities that endanger underground sources of drinking water. The agency's approval allows the state to implement

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and enforce state regulations for UIC Class II injection wells only located within the state. The Commonwealth's authority excludes the regulation of injection well Classes I, III, IV, V and VI and all wells on Indian lands, as required by rule under the SDWA. The agency requests public comment on this proposed rule and supporting documentation. In the "Rules and Regulations" section of this Federal Register, the agency published EPA's approval of the state's program as a direct final rule without a prior proposed rule. If the agency receives no adverse comment, EPA will not take further action on this proposed rule.

**DATES:** Written comments must be received by November 28, 2016.

**[EPA, State of Kentucky Underground Injection Control \(UIC\) Class II Program: Primacy Approval](#)**

**Direct final rule.** The U.S. Environmental Protection Agency (EPA) is taking direct final action to approve the Commonwealth of Kentucky's Underground Injection Control Class II (UIC) Program for primacy. The EPA determined that the state's program is consistent with the provisions of the Safe Drinking Water Act (SDWA) at Section 1425 to prevent underground injection activities that endanger underground sources of drinking water. The agency's approval allows the state to implement and enforce state regulations for UIC Class II injection wells located within the state. The Commonwealth's authority excludes the regulation of injection well Classes I, III, IV, V and VI and all wells on Indian lands, as required by rule under the SDWA.

**DATES:** This rule is effective on January 26, 2017 without further notice, unless

EPA receives adverse comment by November 28, 2016.

## HEALTH & SAFETY

**OSHA, [Informal Discussion on Hazard Communication Rulemaking](#)**

**Notice of public meeting.** This notice is to advise interested persons that on Wednesday, November 16, 2016, OSHA will conduct a public meeting to informally discuss potential updates to the Hazard Communication Standard. The purpose of this meeting is to invite stakeholders to identify topics or issues they would like OSHA to consider in the rulemaking.

**DATES:** Wednesday November 16, 2016.

## ENDANGERED SPECIES

**Fish & Wildlife Service, [Endangered and Threatened Wildlife and Plants; Threatened Species Status for Kentucky Arrow Darter With 4\(d\) Rule](#)**

**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 Kentucky arrow darter (*Etheostoma spilotum*), a fish species from the upper Kentucky River basin in Kentucky. The effect of this regulation will be to add this species to the List of Endangered and Threatened Wildlife. The Service is also adopting a rule under section 4(d) of the Act (a "4(d) rule") to further provide for the conservation of the Kentucky arrow darter.

**DATES:** This rule becomes effective November 4, 2016.

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**Fish & Wildlife Service, [Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Kentucky Arrow Darter](#)**

**Final rule.** The U.S. Fish and Wildlife Service (Service), designate critical habitat for the Kentucky arrow darter (*Etheostoma spilotum*) under the Endangered Species Act (Act). In total, approximately 398 stream kilometers (skm) (248 stream miles (smi)) fall within the boundaries of the critical habitat designation.

**DATES:** This rule becomes effective on November 4, 2016.

**Fish & Wildlife Service, [Endangered and Threatened Wildlife and Plants; Removal of \*Solidago albopilosa\* \(White-haired Goldenrod\) From the Federal List of Endangered and Threatened Plants](#)**

**Final rule and notice of availability of final post-delisting monitoring plan.** the U.S. Fish and Wildlife Service (Service), IS removing the plant *Solidago albopilosa* (whitehaired goldenrod) from the Federal List of Endangered and Threatened Plants. This action is based on a thorough review of the best available scientific and commercial information, which indicates that the threats to this species have been eliminated or reduced to the point that the species no longer meets the definition of an endangered or threatened species under the Endangered Species Act of 1973, as amended. This rule also announces the availability of a final post-delisting monitoring (PDM) plan for white-haired goldenrod.

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

**Fish & Wildlife Service. [Endangered and Threatened Wildlife and Plants; 5-Year Status Review of the Red Wolf](#)**

**Notice of initiation of review; request for information.** The U.S. Fish and Wildlife Service (Service), is initiating a 5-year status review for the red wolf (*Canis rufus*) under the Endangered Species Act of 1973, as amended (Act). A 5-year review is an assessment of the best scientific and commercial data available at the time of the review. The Service is requesting submission of information that has become available since the last review of this species.

**DATES:** To allow the Service adequate time to conduct this review, the Service must receive comments or information on or before December 30, 2016. However, the Service will continue to accept new information about any listed species at any time.

## OTHER

**EPA, [Significant New Uses of Chemical Substances; Updates to the Hazard Communication Program and Regulatory Framework; Minor Amendments To Reporting Requirements for Premanufacture Notices; Reopening of Comment Period](#)**

**Proposed rule; Reopening of comment period.** In the Federal Register of July 28, 2016, EPA proposed to amend the hazard communication program and aspects of the regulatory framework for significant new uses of chemical substances and reporting requirements for premanufacture notices under the Toxic Substances Control Act. This document reopens the comment period for 30 days.

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A commenter requested additional time to submit written comments for the proposed rule. EPA believes that the request is reasonable and is therefore reopening the comment period in order to give all interested persons the opportunity to comment fully.

**DATES:** The comment period for the proposed rule published on July 28, 2016 (81 FR 49598) (FRL-9944-47) is reopened. Comments, identified by docket identification (ID) number EPA- HQ- OPPT-2014-0650 must be received on or before November 21, 2016.

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