



## SMG Reg Watch

November 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 election of Donald Trump, was a welcome relief on the morning after election day to those that have been regulated by EPA over the past eight years. It will be good to work with an agency that hopefully will establish policy based on laws and regulations rather than political priorities.

Something worth remembering is that only the top part of EPA's organization will turnover in a new administration. While we will see new faces at EPA headquarters and at the Regional Administrator level in the Regional offices, the bulk of agency employees will remain intact. Look for change but don't expect the new team to make significant changes quickly. One area that will change quickly are the issues that were put in place by President Obama through Administrative Orders. There are a lot of these and I expect them to be gone the day after President-Elect Trump takes office.

I like President-elect Trump's appointment of Scott Pruitt to head EPA. Pruitt said his goal as EPA Administrator would be to protect both the environment and American businesses. I know firsthand that this can be done having served in a transition republican administration in Kentucky. This goal would be a step in the right direction and it would make EPA an effective agency again.

Keep your eye on "midnight regulations". These are strategies used by most lame duck administrations and represent a president's last opportunity to establish rules on issues they feel is important. Obama leaves office on January 20. Major regulatory changes require a 60 day waiting period meaning that the President had until late November to establish his regulatory priorities. Examples include

offshore oil and gas leasing, EPA's Accidental Release Prevention Program and new NPDES regulations under the Clean Water Act.

Every new chief of staff on the afternoon of January 20 will issue a memo that goes out to all agencies saying to stop the presses, don't send anything to the Federal Register. The memo will say that if a regulation is at the Federal Register but not yet published, pull it back. The second thing that will happen is that they will take stock of what has just happened in the last month or so. They will ask what's in, what has already become effective and they will categorize the kinds of things that can be done to displace ones that have already become effective. There are several additional tools that a new administration can use. The Congressional Review Act, work with the judiciary in its response to litigation over regulation and how a new administration will interpret and enforce a rule is also an option.

On the legislative and regulatory front, the United States House of Representatives Committee on Oversight and Government Reform issued a Majority Staff Report titled *Politicization of the Waters of the United States Rulemaking*. Some of the reports findings included:

- EPA sidelined the Corps;
- EPA and Corps push through the rule despite strong objections from senior Corps leadership;
- The handling of the science supporting the rule was problematic
- There is much more. It's worth looking at

A "Midnight Regulation" that will impact the oil and gas industry includes the recently released National Park Service (NPS) final regulation applicable to nonfederal oil and gas operations undertaken with NPS boundaries in all states except Alaska. The final rule includes elimination of exemptions effecting approximately 60 percent of the oil and gas operations on NPS lands, removal of the bonding cap, new well plugging requirements and new access fees for land use outside an operator's mineral lease.

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 Expedites Chemicals for Action](#)
- [EPA Proposes to Approve RACM Determination for PM2.5 in the Louisville Area](#)
- [Kentucky Receives Primary Approval for Class II Underground Injection Control Program](#)
- [Using Worms to Treat Wastewater?](#)
- ['Tis the Season to be Green!](#)
- [Pretreatment Programs-Record Keeping Requirements](#)

## State Regulation Review

## Proposed Amendments

**ENERGY AND ENVIRONMENT CABINET:  
Department for Environmental  
Protection: Division of Waste  
Management: Special Waste**

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[401 KAR 45:010](#). Definitions for 401 KAR Chapter 45.

[401 KAR 45:060](#). Special waste permit-by-rule.

**ENERGY AND ENVIRONMENT CABINET:  
Department for Environmental  
Protection: Division of Air Quality**

[401 KAR 60:005](#). 40 C.F.R. Part 60 standards of performance for new stationary sources

[401 KAR 63:002](#). 40 C.F.R. Part 63 national emission standards for hazardous air pollutants

[401 KAR 63:060](#). List of hazardous air pollutants, petitions process, lesser quantity designations, and source category list

**Proposed New Administrative  
Regulations**

**ENERGY AND ENVIRONMENT CABINET:  
Department for Environmental  
Protection: Division of Water: Water  
Resources**

[401 KAR 4:070](#). Coal combustion residuals surface impoundments.

**Division of Waste Management: Coal  
Combustion Residuals (CCR)**

[401 KAR 46:101](#). Definitions for 401 KAR Chapter 46.

[401 KAR 46:110](#). Standards for the disposal of coal combustion residuals (CCR) in CCR units.

[401 KAR 46:120](#). Coal combustion residuals (CCR) permit-by-rule.

**Louisville Air Pollution Control District.** The Louisville Metro Air Pollution Control District opens a public comment period November 30, 2016, on a Public comment period and hearing on a [1-Hour SO2](#)

[Attainment Plan for the Louisville/Jefferson County, Kentucky Nonattainment Area](#), which the District intends to submit to the Kentucky Division for Air Quality to send to EPA for inclusion in the Kentucky State Implementation Plan.

Written statements will be accepted by the District Secretary-Treasurer, Rachael Hamilton, Louisville Metro Air Pollution Control District, 701 W. Ormsby Ave., Louisville, Kentucky, 40203, until 5:00 p.m., January 6, 2017. Written statements will also be accepted electronically until the same deadline via the Internet at the e-mail address "[airregs@louisvilleky.gov](mailto:airregs@louisvilleky.gov)". Oral statements will be accepted at a public hearing in the Edison Room at 701 W. Ormsby Ave., Louisville, at 10:00 a.m., January 18, 2017, if one is requested. Request for a public hearing must be received no later than January 6, 2017. If no request for a public hearing is received, the hearing will be cancelled and notice of the cancellation will be posted on the District's website, [www.louisvilleky.gov/apcd](http://www.louisvilleky.gov/apcd), or you may call (502) 574-6000.

[Legal Notice](#)

**Federal Regulation Review**

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## AIR

### [EPA, Rescission of Preconstruction Permits Issued Under the Clean Air Act](#)

**Final rule.** The Environmental Protection Agency (EPA) is promulgating amendments to the EPA's federal Prevention of Significant Deterioration (PSD) regulations to remove a date restriction from the Permit Rescission provision. Other than removing the date restriction, this final rule does not alter the criteria under which a new source review (NSR) permit may be rescinded. This final rule also clarifies that a rescission of a permit is not automatic and corrects an outdated cross-reference to another part of the PSD regulations. The EPA is also adding a corresponding Permit Rescission provision in the federal regulations that apply to major sources in nonattainment areas of Indian country.

**DATES:** This final rule is effective on December 7, 2016.

### [EPA, Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications and State Implementation Plan Requirements](#)

**Proposed rule.** The Environmental Protection Agency (EPA) is proposing nonattainment area classification thresholds and implementation requirements for the strengthened 2015 ozone national ambient air quality standards (NAAQS) (2015 ozone NAAQS) that were promulgated on October 1, 2015. This proposal is largely an update to the implementing regulations previously promulgated for the 2008 ozone NAAQS, and we propose to retain without significant revision the majority of those provisions to implement the 2015 ozone

NAAQS. This proposal addresses the timing of attainment dates for each nonattainment area classification and a range of nonattainment area state implementation plan (SIP) requirements for the 2015 ozone NAAQS. The proposed SIP requirements pertain to attainment demonstrations, reasonable further progress (RFP) and associated milestone demonstrations, reasonably available control technology (RACT), reasonably available control measures (RACM), major nonattainment new source review (NNSR), emission inventories, the timing of required SIP submissions, and compliance with emission control measures in the SIP. Other issues addressed in this proposed rule are the revocation of the 2008 ozone NAAQS, anti-backsliding requirements that would apply when the 2008 ozone NAAQS are revoked, and reconsideration of the ozone NAAQS interprecursor trading (IPT) provisions (in response to a petition for reconsideration).

**DATES:** Comments. Written comments must be received on or before January 17, 2017.

### [EPA, Air Plan Approval: KY Infrastructure Requirements for the 2010 1-Hour NO<sub>2</sub> NAAQS](#)

**Final rule:** The Environmental Protection Agency (EPA) is taking final action 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

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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 Kentucky’s SIP contains provisions that ensure the 2010 1-hour NO<sub>2</sub> NAAQS is implemented, enforced, and maintained in Kentucky. EPA has determined that portions of Kentucky’s infrastructure submission, submitted on April 26, 2013, addresses certain required infrastructure elements for the 2010 1-hour NO<sub>2</sub> NAAQS. **DATES:** This rule will be effective December 21, 2016.

**EPA, [Designation of Areas for Air Quality Planning Purposes; Ohio; Redesignation of the Ohio Portion of the Campbell-Clermont KY-OH Sulfur Dioxide Nonattainment Area](#)**

**Final rule.** In accordance with the Clean Air Act (CAA), the Environmental Protection Agency (EPA) is redesignating the Ohio portion of the Campbell-Clermont KY-OH sulfur dioxide (SO<sub>2</sub>) nonattainment area from nonattainment to attainment. The Ohio portion of this area consists of Pierce Township in Clermont County, Ohio. EPA is also approving Ohio’s maintenance plan, submitted on August 11, 2015. The primary emission source in the area has permanently closed, and the air quality in the area is now meeting the SO<sub>2</sub> standard. EPA received one comment in support of the redesignation.

**DATES:** This final rule is effective on November 21, 2016.

**EPA, [Greenhouse Gas Reporting Rule: Leak Detection Methodology Revisions and Confidentiality Determinations for Petroleum and Natural Gas Systems](#)**

**Final rule.** The Environmental Protection Agency is finalizing revisions and confidentiality determinations for the petroleum and natural gas systems source category of the Greenhouse Gas Reporting Program. In particular, this action adds new monitoring methods for detecting leaks from oil and gas equipment in the petroleum and natural gas systems source category consistent with the fugitive emissions monitoring methods in the recently finalized new source performance standards for the oil and gas industry. This action also adds emission factors for leaking equipment to be used in conjunction with these monitoring methods to calculate and report greenhouse gas emissions resulting from equipment leaks. Finally, this action finalizes reporting requirements and confidentiality determinations for nine new or substantially revised data elements contained in these amendments. **DATES:** This final rule is effective on January 1, 2017.

## WASTE

**EPA, [Hazardous Waste Generator Improvements Rule](#)**

**Final rule.** With this action, the United States Environmental Protection Agency (EPA) is finalizing revisions to the Resource Conservation and Recovery Act’s (RCRA) hazardous waste generator regulatory program proposed on September 25, 2015. There are several objectives to these revisions. They include reorganizing the hazardous waste

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generator regulations to make them more user-friendly and thus improve their usability by the regulated community; providing a better understanding of how the RCRA hazardous waste generator regulatory program works; addressing gaps in the existing regulations to strengthen environmental protection; providing greater flexibility for hazardous waste generators to manage their hazardous waste in a cost-effective and protective manner; and making technical corrections and conforming changes to address inadvertent errors and remove obsolete references to programs that no longer exist. This final rule responds to the comments of EPA stakeholders, taking into consideration the mission of EPA and the goals of RCRA.

**DATES:** This final rule is effective on May 30, 2017. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 30, 2017.

## WATER

**EPA, [Proposed Information Collection Request; Comment Request; Willingness To Pay Survey To Evaluate Recreational Benefits of Nutrient Reductions in Coastal New England Waters](#)**

**Notice.** The Environmental Protection Agency (EPA) is planning to submit an information collection request (ICR), “Willingness to Pay Survey to Evaluate Recreational Benefits of Nutrient Reductions in Coastal New England Waters” (EPA ICR No. 2558.01, OMB Control No. 2080–NEW) to the Office of Management and Budget (OMB) for review and approval in accordance with

the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 et seq.). Before doing so, EPA is soliciting public comments on specific aspects of the proposed information collection as described below. This is a request for approval of a new collection. An Agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

**DATES:** Comments must be submitted on or before January 9, 2017.

**EPA, EPA Approval of Kentucky’s 2014 Section 303(d) list.**

**EPA Approval.** On December 4, 2015, the Kentucky Division of Water submitted the 2014 Integrated Report to Congress on the Condition of Water Resources in Kentucky, Volume I and Volume II to the U.S. Environmental Protection Agency (EPA). Volume II of the 2014 Integrated Report to Congress, 303(d) List of Surface Waters, requires approval from EPA. The Division is pleased to announce on October 13, 2016, EPA approved Kentucky’s 2014 Section 303(d) list. The 2014 Integrated Report to Congress on the Condition of Water Resources in Kentucky, Volume I and Volume II is located on the Division’s website [water.ky.gov](http://water.ky.gov).

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

**Withdrawal of direct final rule.** Because the Environmental Protection Agency (EPA) received comments that could be construed as adverse, the EPA is withdrawing the direct final rule issued on September 30, 2016, to extend the

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implementation date for certain facilities subject to the EPA's final rule establishing pretreatment standards under the Clean Water Act (CWA) for discharges of pollutants into publicly-owned treatment works (POTWs) from unconventional oil and gas extraction.

**DATES:** Effective November 28, 2016, the EPA withdraws the direct final rule published September 30, 2016 (81 FR 67191).

### ENDANGERED SPECIES

**Fish and Wildlife Service, Interior.** [U.S. Fish and Wildlife Service Mitigation Policy Notice of final policy](#). The U.S. Fish and Wildlife Service (Service), announce revisions to the Mitigation Policy, which has guided Service recommendations on mitigating the adverse impacts of land and water developments on fish, wildlife, plants, and their habitats since 1981. The revisions are motivated by changes in conservation challenges and practices since 1981, including accelerating loss of habitats, effects of climate change, and advances in conservation science. The revised Policy provides a framework for applying a landscape-scale approach to achieve, through application of the mitigation hierarchy, a net gain in conservation outcomes, or at a minimum, no net loss of resources and their values, services, and functions resulting from proposed actions. The primary intent of the Policy is to apply mitigation in a strategic manner that ensures an effective linkage with conservation strategies at appropriate landscape scales.

**DATES:** This Policy is effective on November 21, 2016.

### OTHER

**Bureau of Safety and Environmental Enforcement.** [Information Collection Activities: Oil and Gas Well-Workover Operations; 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 Enforcement (BSEE) is notifying the public that we have submitted to OMB an information collection request (ICR) to renew approval of the paperwork requirements in the regulations under Subpart F, Oil and Gas Well-Workover Operations. This notice also provides the public a second opportunity to comment on the revised paperwork burden of these regulatory requirements.

**DATES:** You must submit comments by December 7, 2016.

**EPA, [Public Hearing for the Renewables Enhancement and Growth Support Rule](#)**

**Announcement of public hearing.** The Environmental Protection Agency (EPA) is announcing a public hearing to be held in Chicago, Illinois on December 6, 2016, on its proposal for the "Renewables Enhancement and Growth Support (REGS) Rule." The public can view the proposal at [https:// www.epa.gov/renewable-fuel-standardprogram/proposed-renewablesenhancement-and-growth-support-regsrule](https://www.epa.gov/renewable-fuel-standardprogram/proposed-renewablesenhancement-and-growth-support-regsrule). Comments submitted at the public hearing will contribute to the REGS Rule proposal that the EPA will publish at a later date in the Federal Register.

**DATES:** The public hearing will be held on December 6, 2016, at Palmer House Hilton

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Hotel, 17 East Monroe Street, Chicago, IL 6060.

**EPA, [Renewables Enhancement and Growth Support Rule](#)**

**Proposed rule.** In this action, the Environmental Protection Agency (EPA) is proposing to update both its renewable fuels and other fuels regulations to reflect changes in the marketplace and to promote the growing use of both ethanol fuels (conventional and advanced) and non-ethanol advanced and cellulosic biofuels. The EPA is proposing to make several changes to the Renewable Fuel Standard (RFS) program regulations that would align them with recent developments in the marketplace to increase production of cellulosic and other advanced biofuels. There are several companies that have developed renewable fuel production technologies that produce a “biointermediate” at one facility that is then processed into renewable fuel at another facility, and we are proposing regulatory changes to allow fuels produced through such methods to qualify under existing approved renewable fuel production pathways. This action also proposes to update our fuel regulations by defining fuel blends containing 16 to 83 volume percent ethanol as ethanol flex fuel (EFF) and to no longer treat fuel blends containing 16 to 50 volume percent ethanol as gasoline. The EPA is proposing environmentally protective fuel quality specifications for EFF that are consistent with those already in place for gasoline. In this action we are also proposing new pathways for cellulosic biofuel produced from short-rotation trees and for renewable diesel and biodiesel produced from non-cellulosic portions of separated

food waste. We are also proposing to add new registration, recordkeeping, and reporting requirements for facilities using carbon capture and storage if we were to approve the use of this technology in future assessments of proposed pathways for producing qualifying renewable fuel. We are also seeking comment on how best to implement and/or revise the RFS regulations pertaining to the generation of RINs for renewable electricity used as transportation fuel. Finally, we are proposing a number of other regulatory changes, clarifications, and technical corrections to the RFS program and other fuels regulations.

**DATES:** Comments. Comments must be received on or before January 17, 2017.

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