



SMG Reg Watch

December 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

There are two obvious things going on that we need to be keeping an eye on: a new Republican administration taking over at the federal level and a new Republican majority taking over Kentucky's House of Representatives. Activities in both of these areas will be fascinating over the upcoming weeks and months.

Kentucky's Governor Bevin should have a much easier time accomplishing his priorities through the state legislature than President Elect Trump at the federal level. Kentucky Republicans have a clear majority in the House and Senate and control the Governor's office. The US Senate is almost evenly divided between Republicans and Democrats. The first lesson that the Governor and the Kentucky House Speaker will learn is that while you may have a political majority, the individual representatives in Kentucky are independent and may have different priorities. Trent Lott, when he was Senate Majority Leader said his job amounted to, "herding cats". His point was that it's very difficult to govern as the majority; keeping your caucus moving in the same direction can be challenging. Speaker Hoover in Kentucky and Senator McConnell will have the same challenge.

In this edition of Reg Watch, we will look at upcoming issues at the federal level and what is on the horizon with the Kentucky Legislature. Beginning next week, we will separate Kentucky's legislative issues from this regulatory summary because the Kentucky General Assembly is back for its "short" session.

Federal Issues *Cabinet Nominees*

Scott Pruitt, the Attorney General from Oklahoma, has been nominated by President

Elect Trump to be the next **USEPA Administrator**. Mr. Pruitt is from Kentucky and attended the University of Kentucky and Georgetown College. He was well-received speaker at a recent Kentucky Chamber Environmental Seminar. As Oklahoma Attorney General, Mr. Pruitt participated in a coalition of state attorney generals that challenged various EPA rules, including challenges to the Waters of the United States (WOTUS) rule and the Clean Power Plan. His office also intervened in judicial actions involving the EPA Chesapeake Bay TMDL and the Clean Air Act's Oil and Gas Methane rules.

An important function of the EPA Administrator is naming Regional Administrators for EPA Regions. These important positions ensure that the policies and priorities of the Administration are carried out.

Retired General James Mattis has been nominated as **Secretary of Defense**. General Mattis, as Commanding General of the Marine Corps Combat Development Command during Operation Iraqi Freedom, urged the Department of Defense to "unleash us from the tether of fuel". In response, the Naval Research Advisory Committee developed a 2006 report entitled "Future Fuels" which concludes that the military should commit to procure alternative, cost competitive, synthetic fuels and other sustainable solutions. This concept fits well with the President Elect's promise to increase the use of coal. I've worked on synfuel projects for the military pre-Obama administration. What better way to demonstrate your commitment to

the US energy base and national security? Look for a more aggressive policies in the synfuel area and the military.

Federal Regulations/Policy

EPA published the [NPDES Municipal Separate Storm Sewer System \(MS4\) General Permit Remand Rule](#) on December 9, 2016. This is an important rule to watch especially in states like Kentucky that has primacy in this area. While EPA can promulgate regulations, states with primacy have to write their own rules that are effective as (possibly a little different than) the EPA rules. Start talking to your stormwater regulators to see how this rule will be implemented. EPA's rule requires states to choose from three methods ("doors") when issuing general NPDES permits. States can choose "door #1"-Issue a comprehensive general permit that includes all terms and conditions; "door #2"- Issue a basic general permit that is supplemented with additional conditions specific to the individual MS4 applicant; or "door #3" - use a combination of these two methods. Remember that Kentucky has not finalized their Phase 2 MS4 permit. Look for Kentucky's draft permit to be released for public comment sometime in late January or February.

If you haven't been paying attention to EPA's process of approving **State Implementation Plans (SIPs)** you'd better wake up. EPA's game is to reject a state's SIP and set rules for facilities at or near the nonattainment areas with a FIP (Federal Implementation Plan). Guidance documents regarding modeling are part of this approach.

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Currently, EPA is driving the SIP/FIP process in Jefferson County, Kentucky, and it's a mess. The current draft SIP is out for public notice. Similarly, at the national level, EPA Region 6 proposed a FIP for Texas to address the remaining outstanding requirements that are not satisfied (according to EPA) by the Texas Regional Haze State Implementation Plan. Let's see how fast the new EPA takes to get this procedural mess straightened out.

Noncompliance is about to get more expensive. EPA has recently updated the maximum **civil penalties for federal environmental violations**. Major environmental statutes mandate the maximum civil penalty amount that the EPA can impose for each violation for each day it occurs or continues. In July 2016, EPA increased those maximum civil penalties. The first increase was described as an initial "catch up" adjustment. The second increase will be an annual adjustment beginning January 15, 2017. Amounts vary across environmental statutes but the effect on the Clean Water Acts means Class I penalties for individual stormwater violations, originally set at \$25,000 per violation per day were increased to \$51,570 per violation. Class II penalties for continuous stormwater violations, originally set at \$125,000 were increased to \$257,848. If you are unfortunate enough to catch a combination of those violations the dollars will get very big, very fast.

Kentucky Legislation

Kentucky's Legislature convened Tuesday January 3. Part I of the session will run from

January 3-January 6. Part II will run February 7 through March 15, with veto sessions scheduled March 16 through March 27. The session is scheduled to close March 30.

A few environmental/energy Bills or Resolutions were pre-filed. There is a [Concurrent Resolution](#) filed by Senator Thomas that would establish a work group to develop ideas relating to portfolio standards. Don't look for this idea to get very far this year.

Senator Carroll ([SB 11](#)) and Representative Watkins ([HB 90](#)) bills relate to the storage of nuclear material. Specifically, a nuclear facility must have a plan for storage rather than a means of permanent disposal of their waste material. This idea has been around for several years. Watch this one, it may make it this time.

There are two other Prefiled Bills. One deals with [timber theft](#) and the other relates to [pesticide notice requirements](#).

More details on legislative activity and priorities will be available next week. Stay tuned.

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 Issues Drinking Water Health Advisories for PFOA and PFOS](#)
- [SMG Collecting Plastic Lids and Caps to Help Masterson Station Park](#)

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- [DAQ Establishes Updated Title V Air Emissions Fee](#)
- [Gina McCarthy signs Risk Management Program Amendments](#)
- [Important Change to Kentucky eForms Submission Process](#)
- [Pretreatment Program – Reporting Requirements by POTW](#)

State Regulation Review

Louisville Air Pollution Control District, Public comment period and hearing on a [1-Hour SO2 Attainment Plan for the Louisville/Jefferson County, Kentucky Nonattainment Area](#) (30mb file); [Legal Notice](#)

Federal Regulation Review

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AIR

EPA, [Air Plan Approval and Designation of Areas; KY; Redesignation of the Campbell County, 2010 1-Hour Sulfur Dioxide Nonattainment Area to Attainment](#)

Proposed rule. The Environmental Protection Agency (EPA) is proposing to approve two separate but related submissions (one of which includes multiple components) provided by the Commonwealth of Kentucky, through the Kentucky Division of Air Quality (KDAQ), in relation to attainment of the 2010 Sulfur

Dioxide (SO2) national ambient air quality standards (NAAQS) for the Kentucky portion of the Campbell-Clermont, Kentucky-Ohio 2010 1-hour SO2 nonattainment area (hereafter referred to as the “Campbell Clermont, KY-OH Area” or “Area”). On March 31, 2015, KDAQ submitted a request for EPA to determine that the Campbell-Clermont, KY-OH Area attained the 2010 1-hour SO2 NAAQS per EPA’s “Clean Data Policy.” Subsequently, on February 22, 2016, KDAQ submitted a request for EPA to redesignate the Campbell County portion of Kentucky that is within the Campbell-Clermont, KY-OH Area to attainment for the 2010 1-hour SO2 NAAQS, and to approve a State Implementation Plan (SIP) revision containing a maintenance plan, base year inventory, and reasonably available control measures (RACM) determination for the Kentucky portion of the Area. EPA is proposing to approve the Commonwealth’s RACM determination and incorporate it into the SIP; to approve the base year emissions inventory for the Kentucky portion of the Area and incorporate it into the SIP; to approve the Commonwealth’s request for a clean data determination; to approve the Commonwealth’s plan for maintaining attainment of the 2010 1- hour SO2 NAAQS and incorporate it into the SIP; and to redesignate the Kentucky portion of the Area to attainment for the 2010 1-hour SO2 NAAQS.

DATES: Comments must be received on or before January 3, 2017.

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

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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, through the Kentucky Division for Air Quality (KDAQ), on behalf of the Louisville Metro Air Pollution Control District (District), on March 22, 2011, and May 3, 2012. The revisions to the regulatory portion of the SIP that EPA is taking final action to approve pertain to changes to the District's air quality standards for lead (Pb), particulate matter (both PM2.5 and PM10), ozone, nitrogen dioxide (NO₂), and sulfur dioxide (SO₂) to reflect the National Ambient Air Quality Standards (NAAQS), definitional changes, and regulatory consolidation. EPA has determined that these portions of the March 22, 2011, and May 3, 2012, SIP revisions are consistent with the Clean Air Act (CAA or Act).

DATES: This rule will be effective January 5, 2017.

EPA, [Air Quality Plans; Kentucky; Infrastructure Requirements for the 2010 Sulfur Dioxide National Ambient Air Quality Standard](#)

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, for inclusion into the Kentucky SIP. This final action pertains to the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2010 1-hour sulfur

dioxide (SO₂) 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 submission." KDAQ certified that the Kentucky SIP contains provisions that ensure the 2010 1-hour SO₂ NAAQS is implemented, enforced, and maintained in Kentucky. EPA has determined that Kentucky's infrastructure SIP submission, provided to EPA on April 26, 2013, satisfies certain required infrastructure elements for the 2010 1-hour SO₂ NAAQS.

DATES: This rule will be effective January 5, 2017.

EPA, [Release of the Final Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter](#)

Notice of availability. The Environmental Protection Agency (EPA) is announcing the availability of the final document titled Integrated Review Plan for the National Ambient Air Quality Standards for Particulate Matter (IRP). The IRP presents the planned approach and anticipated schedule for the review of the air quality criteria for particulate matter (PM) and the primary and secondary national ambient air quality standards (NAAQS) for PM. The primary and secondary NAAQS for PM are set to protect the public health and public welfare, respectively, from exposures to PM in ambient air.

DATES: The IRP will be available on or about December 5, 2016.

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

Final rule. The Environmental Protection Agency (EPA) is finding that the Cincinnati, Ohio-Kentucky-Indiana area is attaining the 2008 ozone National Ambient Air Quality Standard (NAAQS or standard) and is redesignating the Ohio portion of the Cincinnati area to attainment for the 2008 ozone NAAQS because the area meets the statutory requirements for redesignation under the Clean Air Act (CAA or Act). The Cincinnati 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. EPA is also approving, as a revision to the Ohio State Implementation Plan (SIP), the state's plan for maintaining the 2008 ozone standard through 2030 in the Cincinnati area. Finally, EPA finds adequate and is approving the state's 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 area. The Ohio Environmental Protection Agency (Ohio EPA) submitted the SIP revision and redesignation request on April 21, 2016.

DATES: This final rule is effective December 16, 2016.

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

Notice of public hearing and extension of comment period. The Environmental

Protection Agency (EPA) is announcing that a public hearing will be held for the proposed rule titled, "Implementation of the 2015 National Ambient Air Quality Standards for Ozone: Nonattainment Area Classifications and State Implementation Plan Requirements," which published in the Federal Register on November 17, 2016. The hearing will be held on Thursday, January 12, 2017, in Washington, DC. The EPA is also announcing extension of the comment period for the proposed rule to February 13, 2017, to allow sufficient time after the public hearing for commenters to submit comments.

DATES: Public Hearing. The public hearing will be held on January 12, 2017, in Washington, DC. Comments must be received on or before February 13, 2017.

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

Final rule. The Environmental Protection Agency (EPA) is approving 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: This rule will be effective January 26, 2017.

WATER

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EPA, [National Pollutant Discharge Elimination System \(NPDES\) Municipal Separate Storm Sewer System General Permit Remand Rule](#)

Final rule. The Environmental Protection Agency (EPA) is revising the regulations governing regulated small municipal separate storm sewer system (MS4) permits to respond to a remand from the United States Court of Appeals for the Ninth Circuit in *Environmental Defense Center, et al. v. EPA*, 344 F.3d 832 (9th Cir. 2003). In that decision, the court determined that the regulations for providing coverage under small MS4 general permits did not provide for adequate public notice and opportunity to request a hearing. Additionally, the court found that EPA failed to require permitting authority review of the best management practices (BMPs) to be used at a particular MS4 to ensure that the small MS4 permittee reduces pollutants in the discharge from their systems to the “maximum extent practicable” (MEP), the standard established by the Clean Water Act (CWA) for such permits. The final rule establishes two alternative approaches a permitting authority can use to issue National Pollutant Discharge Elimination (NPDES) general permits for small MS4s and meet the requirements of the court remand. The first option is to establish all necessary permit terms and conditions to require the MS4 operator to reduce the discharge of pollutants from its MS4 to the MEP, to protect water quality, and to satisfy the appropriate water quality requirements of the Clean Water Act (“MS4 permit standard”) upfront in one comprehensive permit. The second option allows the permitting authority to establish the

necessary permit terms and conditions in two steps: A first step to issue a base general permit that contains terms and conditions applicable to all small MS4s covered by the permit and a second step to establish necessary permit terms and conditions for individual MS4s that are not in the base general permit. Public notice and comment and opportunity to request a hearing would be necessary for both steps of this two-step general permit. This final rule does not establish any new substantive requirements for small MS4 permits.

DATES: This final rule is effective on January 9, 2017.

ENDANGERED SPECIES

OTHER

EPA, [TSCA Reporting and Recordkeeping Requirements; Standards for Small Manufacturers and Processors](#)

Notice. On June 22, 2016, President Obama signed into law the Frank R. Lautenberg Chemical Safety for the 21st Century Act which amended the Toxic Substance Control Act (TSCA). TSCA, as amended, requires EPA to review the size standards for small manufacturers and processors, which are currently used in connection with reporting regulations under TSCA Section 8(a). In particular, EPA must make a determination whether a revision of those standards is warranted. EPA’s preliminary determination is that revisions to currently codified size standards for TSCA Section 8(a) are indeed warranted. As part of the ongoing review process, the EPA is requesting public comment on whether a revision of the

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current size standard definitions is warranted at this time.

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

EPA, [Designation of Ten Chemical Substances for Initial Risk Evaluations Under the Toxic Substances Control Act](#) AGENCY: [Environmental Protection Agency \(EPA\)](#).

Notice. As required by the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act in June 2016, EPA is publishing an initial list of ten (10) chemical substances that will be the subject of the Agency's chemical risk evaluations to determine whether the chemical substances present an unreasonable risk of injury to health or the environment. The law requires that EPA initiate risk evaluations on 10 chemical substances drawn from the 2014 update of the TSCA Work Plan for Chemical Assessments and that EPA publish this list within 180 days of enactment (i.e., by December 19, 2016). EPA's designation of the first ten chemical substances constitutes the initiation of the risk evaluation process for each of these chemical substances, pursuant to the requirements of TSCA section 6(b)(4). For each chemical substance, within six months from the date of publication of this notice, EPA will issue a scoping document. EPA has also established dockets for each of these chemical substances to document each risk evaluation and to facilitate receipt of information that will be useful to the Agency's risk evaluation.

OSHA, [Clarification of Employer's Continuing Obligation To Make and Maintain an](#)

[Accurate Record of Each Recordable Injury and Illness](#)

Final rule. OSHA is amending its recordkeeping regulations to clarify that the duty to make and maintain accurate records of work-related injuries and illnesses is an ongoing obligation. The duty to record an injury or illness continues for as long as the employer must keep records of the recordable injury or illness; the duty does not expire just because the employer fails to create the necessary records when first required to do so. The amendments consist of revisions to the titles of some existing sections and subparts and changes to the text of some existing provisions. The amendments add no new compliance obligations and do not require employers to make records of any injuries or illnesses for which records are not currently required to be made. The amendments in this rule are adopted in response to a decision of the United States Court of Appeals for the District of Columbia Circuit. In that case, a majority held that the Occupational Safety and Health Act does not permit OSHA to impose a continuing recordkeeping obligation on employers. One judge filed a concurring opinion disagreeing with this reading of the statute, but finding that the text of OSHA's recordkeeping regulations did not impose continuing recordkeeping duties. OSHA disagrees with the majority's reading of the law, but agrees that its recordkeeping regulations were not clear with respect to the continuing nature of employers' recordkeeping obligations. This final rule is designed to clarify the regulations in advance of possible future federal court litigation that could further develop the law

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on the statutory issues addressed in the D.C. Circuit's decision.

DATES: This final rule becomes effective on January 18, 2017

EPA, [Fall 2016 Regulatory Agenda](#)

Semiannual regulatory flexibility agenda and semiannual regulatory agenda. The Environmental Protection Agency (EPA) publishes the semiannual regulatory agenda online (the e-Agenda) at <http://www.reginfo.gov> and at www.regulations.gov to update the public.

This document contains information about:

- Regulations in the semiannual regulatory agenda that are under development, completed, or canceled since the last agenda;
- Retrospective reviews of existing regulations; and
- Reviews of regulations with small business impacts under Section 610 of the Regulatory Flexibility Act.

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