



SMG Reg Watch

January 2017 / 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

How can the new leadership in DC fix the regulatory mess that's been left behind?

What has the Obama Administration left for the Trump Administration to deal with?

To put the regulatory issue in perspective, Obama regulations account for over 200,000 pages published in the Federal Register during his administration. By comparison, the Bush Administration published 178,000 pages and the Clinton Administration published 161,000.

The Obama administration published 600 "major rules." "Major rules" are regulations that are estimated to have an economic impact of \$100,00 or more per year. This is 20% more that were produced by the Bush Administration. In their rush to get out of town, the Obama Administration dumped 1400 pages of rules on January 19 alone. There were 13 days after the election but before inauguration in which the number of pages published in the Federal Register was more than double the average capacity from 2015.

As a result, what tools are available to the new Administration? Under the Congressional Review Act, Congress can strike down "major regulations" within 60 legislative days after they are finalized. This would allow Congress to reach back to June to find appropriate regulatory targets. Congress is starting to do this. The current administration can "freeze" pending regulations until they are approved directly by this administration. The new administration's EPA has frozen 30 regulations that were published in the

Federal Register after the 2016 election but have not yet taken effect. They will be delayed until March 21. Finally, Executive Actions or Orders can be used. During the first 10 days of this administration 18 Executive Orders were released.

We will be writing a blog on the details of these first actions of the new administration later this week. There are many of these actions that directly impact Kentucky, so, stay tuned.

It's encouraging to see how fast the new administration has moved on implementing many of the things that were discussed during the campaign. I'm sure that the new leadership will be demonized by the press and the opposition party in Washington. From my perspective, these changes need to be made to allow the leaders of the chemical, industrial and service industries to improve productivity, expand their businesses and encourage investment in the U.S.

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:

- [Evolving Leadership at SMG](#)
- [Pretreatment Program – Reporting Requirements by Industrial Users \(IUs\)](#)
- [United States Environmental Protection Agency 2016 Annual Enforcement Report](#)

- [Rusty Patched Bumble Bee Listed As Endangered](#)
- [Kentucky General Assembly Update: January 5, 2017](#)

State Regulation Review

On October 11, 2016, the Kentucky Division of Water filed a newly proposed regulation (401 KAR 4:070 Coal combustion residual surface impoundments) with the Legislative Research Commission (LRC). This proposed regulation was filed in conjunction with the Division of Waste Management as part of a comprehensive program to manage Coal Combustion Residuals (CCR) in the Commonwealth. The Division of Water received verbal and written comments regarding its proposed regulation during the public comment period which closed on November 30, 2016.

On January 13, 2017, the Division of Water, again in conjunction with the Division of Waste Management, filed a Statement of Consideration regarding the proposed regulations with the LRC. We anticipate that the proposed regulations that the Division of Waste Management amended after comments will be published in the Kentucky Administrative Register on February 1, 2017 and subsequently available on the LRC website at <http://www.lrc.ky.gov/kar/TITLE401.HTM>

The draft [Phase II MS4 permit](#) is out for public notice. Comments are due March 5, 2017. DOW also posted SQMP Guidance document. The site hyperlinked above takes you to DEP's

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permitting database from which you can search for the permit.

Federal Regulation Review

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AIR

[EPA, Air Plan Approval; Ohio; Redesignation of the Ohio Portion of the Cincinnati-Hamilton, OH-IN-KY Area to Attainment of the 1997 Annual Standard for Fine Particulate Matter](#)

Proposed rule. The Environmental Protection Agency (EPA) is proposing to redesignate the Ohio portion of the Cincinnati-Hamilton, OH-IN-KY, nonattainment area (hereafter, “the Cincinnati-Hamilton area”) to attainment for the 1997 fine particulate matter (PM2.5) annual national ambient air quality standards (NAAQS or standard). The Ohio portion of the Cincinnati-Hamilton area includes Butler, Clermont, Hamilton, and Warren Counties. Because EPA has determined that the Cincinnati-Hamilton area is attaining the annual PM2.5 standard, EPA is proposing to redesignate the area to attainment and also proposing several additional related actions. EPA is proposing to approve the Reasonably Available Control Measures (RACM)- Reasonably Available Control Technology (RACT) portion of Ohio’s Cincinnati-Hamilton area attainment plan SIP revision as providing adequate

RACM/RACT. EPA is proposing to approve an update to the Ohio state implementation plan (SIP), by updating the state’s approved plan for maintaining the 1997 annual PM2.5 NAAQS through 2027. EPA previously approved the base year emissions inventory for the Cincinnati-Hamilton area, and is proposing to approve Ohio’s updated emission inventory which includes emission inventories for volatile organic compounds (VOCs) and ammonia. Ohio’s approved maintenance plan submission includes a budget for the mobile source contribution of PM2.5 and nitrogen oxides (NOX) to the Cincinnati-Hamilton Ohio PM2.5 area for transportation conformity purposes, which EPA is proposing to approve and update. EPA is proposing to take these actions in accordance with the Clean Air Act (CAA) and EPA’s implementation rule regarding the 1997 PM2.5 NAAQS.

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

[EPA, Notice of Availability of the Environmental Protection Agency’s Preliminary Interstate Ozone Transport Modeling Data for the 2015 Ozone National Ambient Air Quality Standard \(NAAQS\)](#)

Notice of data availability (NODA); request for public comment. The Environmental Protection Agency (EPA) is providing notice that preliminary interstate ozone transport modeling data and associated methods relative to the 2015 ozone National Ambient Air Quality Standard (NAAQS) are available for public review and comment. This information is being provided to help states develop State Implementation Plans (SIPs) to address the requirements of Clean Air Act (CAA) section 110(a)(2)(D)(i)(I) for the 2015

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ozone NAAQS. The information available includes: (1) Emission inventories for 2011 and 2023, supporting data used to develop those emission inventories, methods and data used to process emission inventories into a form that can be used for air quality modeling; and (2) air quality modeling results for 2011 and 2023, base period (i.e., 2009–2013) average and maximum ozone design value concentrations, projected 2023 average and maximum ozone design value concentrations, and projected 2023 ozone contributions from state-specific anthropogenic emissions and other contribution categories to ozone concentrations at individual ozone monitoring sites. A docket has been established to facilitate public review of the data and to track comments.

DATES: Comments must be received on or before 90 days after publication in the Federal Register.

EPA, [Air Plan Approval and Air Quality Designation; KY; Redesignation of the Kentucky Portion of the Louisville 1997 Annual PM2.5 Nonattainment Area to Attainment](#)

Proposed rule. On March 5, 2012, the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet, Division for Air Quality (DAQ), submitted a request for the Environmental Protection Agency (EPA) to redesignate the portion of Kentucky that is within the bi-state Louisville, KY–IN fine particulate matter (PM2.5) nonattainment area (hereafter referred to as the “bi-state Louisville Area” or “Area”) to attainment for the 1997 Annual PM2.5 national ambient air quality standards (NAAQS) and to approve a state

implementation plan (SIP) revision containing a maintenance plan for the Area. EPA is proposing to approve the Commonwealth’s plan for maintaining the 1997 Annual PM2.5 NAAQS in the Area, including the motor vehicle emission budgets (MVEBs) for nitrogen oxide (NOX) and PM2.5 for the years 2015 and 2025 for the bi-state Louisville Area, and incorporate it into the SIP, and to redesignate the Kentucky portion of the Area to attainment for the 1997 Annual PM2.5 NAAQS. EPA is also notifying the public of the status of EPA’s adequacy determination for the MVEBs for the bistate Louisville Area.

DATES: Comments must be received on or before February 10, 2017.

EPA, [Federal Plan Requirements for Commercial and Industrial Solid Waste Incineration Units](#)

Proposed rule. This action proposes the federal plan for existing commercial and industrial incineration (CISWI) units. This proposed action implements the Environmental Protection Agency’s (EPA) emission guidelines (EG) adopted on February 7, 2013, as amended on June 23, 2016, in states that do not have an approved state plan implementing the EG in place by the effective date of this federal plan. The federal plan will result in emissions reductions of certain pollutants from all affected units covered.

DATES: Comments. Comments must be received on or before February 27, 2017

EPA, [Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act](#)

Final rule. The Environmental Protection Agency (EPA), in response to Executive Order

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13650, is amending its Risk Management Program regulations. The revisions contain several changes to the accident prevention program requirements including an additional analysis of safer technology and alternatives as part of the process hazard analysis for some Program 3 processes, third-party audits and incident investigation root cause analysis for Program 2 and Program 3 processes; enhancements to the emergency preparedness requirements; increased public availability of chemical hazard information; and several other changes to certain regulatory definitions and data elements submitted in risk management plans. These amendments seek to improve chemical process safety, assist local emergency authorities in planning for and responding to accidents, and improve public awareness of chemical hazards at regulated sources.

DATES: This final rule is effective on March 14, 2017

EPA, [Revisions to the Guideline on Air Quality Models: Enhancements to the AERMOD Dispersion Modeling System and Incorporation of Approaches To Address Ozone and Fine Particulate Matter](#)

Final rule. In this action, the Environmental Protection Agency (EPA) promulgates revisions to the Guideline on Air Quality Models (“Guideline”). The Guideline provides EPA’s preferred models and other recommended techniques, as well as guidance for their use in estimating ambient concentrations of air pollutants. It is incorporated into the EPA’s regulations, satisfying a requirement under the Clean Air Act (CAA) for the EPA to specify with reasonable particularity models to be used

in the Prevention of Significant Deterioration (PSD) program. This action includes enhancements to the formulation and application of the EPA’s preferred near-field dispersion modeling system, AERMOD (American Meteorological Society (AMS)/EPA Regulatory Model), and the incorporation of a tiered demonstration approach to address the secondary chemical formation of ozone and fine particulate matter (PM2.5) associated with precursor emissions from single sources. The EPA is changing the preferred status of and removing several air quality models from appendix A of the Guideline. The EPA is also making various editorial changes to update and reorganize information throughout the Guideline to streamline the compliance assessment process.

DATES: This rule is effective February 16, 2017.

EPA, [Response to December 9, 2013, Clean Air Act Section 176A Petition From Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island and Vermont](#)

Notice of proposed action on petition. The Environmental Protection Agency (EPA) is proposing to deny the Clean Air Act (CAA or Act) petition filed on December 9, 2013 (and amended on December 17, 2013), by the states of Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island and Vermont. The petition requested that the EPA add the states of mstockstill on DSK3G9T082PROD with NOTICES VerDate Sep2014 21:20 Jan 18, 2017 Jkt 241001 PO 00000 Frm 00028 Fmt 4703 Sfmt 4703 E:\FR\FM\19JAN1.SGM 19JAN1 6510 Federal Register / Vol. 82, No.

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 The parts of northern Virginia included in the Washington, DC Consolidated Metropolitan Statistical Area are already in the OTR. The petition seeks to add the remainder of the state of Virginia to the OTR as well. Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Tennessee, West Virginia and Virginia to the Ozone Transport Region (OTR). As a result of this denial, the geographic scope or requirements of the OTR will remain unchanged.

DATES: Comments. Comments must be received on or before February 21, 2017.

EPA, [Minor Revisions to AP-42 Section 13.5: Industrial Flares](#)

Notice of final action. On December 14, 2016, the Environmental Protection Agency (EPA) issued minor revisions to AP-42 Section 13.5: Industrial Flares. AP-42 is the primary compilation of the EPA's emissions factor information. The EPA finalized these revisions in compliance with a settlement agreement entered into with Air Alliance Houston, Community In-Power and Development Association, Inc., Louisiana Bucket Brigade, and Texas Environmental Justice Advocacy Services ("Plaintiffs").

WATER

EPA, [National Primary Drinking Water Regulations; Announcement of the Results of EPA's Review of Existing Drinking Water Standards and Request for Public Comment and/or Information on Related Issues](#)

Request for public comments. The Safe Drinking Water Act (SDWA) requires the U.S. Environmental Protection Agency (EPA) to conduct a review every six years of existing

national primary drinking water regulations (NPDWRs) and determine which, if any, need to be revised. The purpose of the review, called the Six-Year Review, is to evaluate current information for regulated contaminants to determine if there is new information on health effects, treatment technologies, analytical methods, occurrence and exposure, implementation and/or other factors that provides a health or technical basis to support a regulatory revision that will improve or strengthen public health protection. EPA has completed a detailed review of 76 NPDWRs and at this time has determined that eight NPDWRs are candidates for regulatory revision. The eight NPDWRs are included in the Stage 1 and the Stage 2 Disinfectants and Disinfection Byproducts Rules, the Surface Water Treatment Rule, the Interim Enhanced Surface Water Treatment Rule and the Long Term 1 Enhanced Surface Water Treatment Rule. EPA requests comments on the eight NPDWRs identified as candidates for revision and will consider comments and data as it proceeds with determining whether further action is needed. In addition, as part of this Six-Year Review, EPA identified 12 other NPDWRs that were or continue to be addressed in recently completed, ongoing or pending regulatory actions. EPA thus excluded those 12 NPDWRs from detailed review. This document is not a final regulatory decision, but rather the initiation of a process that will involve more detailed analyses of factors relevant to deciding whether a rulemaking to revise an NPDWR should be initiated.

DATES: Comments must be received on or before March 13, 2017.

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EPA, [Final National Pollutant Discharge Elimination System \(NPDES\) General Permit for Stormwater Discharges From Construction Activities](#)

Notice of final permit issuance. All ten EPA Regions today are issuing the 2017 National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges from construction activities to waters of the United States, also referred to as the “2017 Construction General Permit (CGP).” The 2017 CGP replaces the existing general permit (the “2012 CGP”) covering stormwater discharges from construction activities that expires on February 16, 2017. EPA is issuing this permit for five (5) years, during which time the permit will make available coverage to eligible operators in all areas of the country where EPA is the NPDES permitting authority. This Federal Register notice describes the 2017 CGP in general and provides a summary of the significant changes from the 2012 CGP.

DATES: The 2017 CGP will become effective on February 16, 2017. This effective date will provide dischargers with the immediate opportunity to comply with Clean Water Act requirements in light of the expiration of the 2012 CGP at midnight on February 16, 2017.

OTHER

EPA, [Addition of Natural Gas Processing Facilities to the Toxics Release Inventory \(TRI\)](#)

Proposed rule. EPA is proposing to add natural gas processing (NGP) facilities (also known as natural gas liquid extraction facilities) to the scope of the industrial sectors covered by the reporting requirements of section 313 of the

Emergency Planning and Community Right-to-Know Act (EPCRA), commonly known as the Toxics Release Inventory (TRI) and section 6607 of the Pollution Prevention Act (PPA). Adding these facilities would meaningfully increase the information available to the public on releases and other waste management of listed chemicals from the natural gas processing sector and further the purposes of EPCRA section 313. EPA estimates that at least 282 NGP facilities in the U.S. would meet the TRI employee threshold (10 full-time employees or equivalent) and manufacture, process, or otherwise use (threshold activities) at least one TRI-listed chemical in excess of applicable threshold quantities. NGP facilities in the U.S. manufacture, process, or otherwise use more than 21 different TRI-listed chemicals, including n-hexane, hydrogen sulfide, toluene, benzene, xylene, and methanol. EPA expects that TRI reporting by U.S. NGP facilities would provide significant release and waste management data on these chemicals to the public.

DATES: Comments must be received on or before March 7, 2017.

EPA, [Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation/ Termination or Suspension of Permits; Procedures for Decisionmaking](#)

Final rule. This final rule revises the Environmental Protection Agency’s (“EPA”) Consolidated Rules of Practice governing the administrative assessment of civil penalties and various other administrative adjudicatory hearings. These revisions

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simplify the administrative processing of cases by removing inconsistencies, codifying electronic filing and service procedures, and streamlining the procedures in cases initiated at EPA Headquarters. This rule also corrects some punctuation typographical errors found in the Consolidated Rules of Practice. This rule similarly revises EPA's procedures governing decisionmaking in permit appeals. These amendments are procedural in nature and none of these changes are intended to substantively alter the Agency's administrative enforcement actions or review of permit appeals.

DATES: This rule is effective on March 10, 2017.

OSHA, [Occupational Exposure to Beryllium](#)

Final rule. The Occupational Safety and Health Administration (OSHA) is amending its existing standards for occupational exposure to beryllium and beryllium compounds. OSHA has determined that employees exposed to beryllium at the previous permissible exposure limits face a significant risk of material impairment to their health. The evidence in the record for this rulemaking indicates that workers exposed to beryllium are at increased risk of developing chronic beryllium disease and lung cancer. This final rule establishes new permissible exposure limits of 0.2 micrograms of beryllium per cubic meter of air (0.2 mg/m³) as an 8-hour time-weighted average and 2.0 mg/m³ as a short-term exposure limit determined over a sampling period of 15 minutes. It also includes other provisions to protect employees, such as requirements for exposure assessment, methods for controlling exposure, respiratory protection, personal protective

clothing and equipment, housekeeping, medical surveillance, hazard communication, and recordkeeping. OSHA is issuing three separate standards—for general industry, for shipyards, and for construction—in order to tailor requirements to the circumstances found in these sectors.

DATES: Effective date: The final rule becomes effective on March 10, 2017.

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

Final rule. The U.S. Fish and Wildlife Service (Service), determine endangered species status under the Endangered Species Act of 1973 (Act), as amended, for the rusty patched bumble bee (*Bombus affinis*), a species that occurs in the eastern and Midwestern United States and Ontario, Canada. The effect of this regulation will be to add this species to the List of Endangered and Threatened Wildlife.

DATES: This rule becomes effective February 10, 2017

EPA, [Civil Monetary Penalty Inflation Adjustment Rule](#)

Final rule. The Environmental Protection Agency (EPA) is promulgating this final rule to adjust the level of statutory civil monetary penalty amounts under the statutes EPA administers. This action is mandated by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended through the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 ("the 2015 Act"). The 2015 Act prescribes a formula for annually adjusting statutory civil penalties to reflect inflation, maintain the deterrent

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effect of statutory civil penalties, and promote compliance with the law. The rule does not necessarily revise the penalty amounts that EPA chooses to seek pursuant to its civil penalty policies in a particular case. EPA's civil penalty policies, which guide enforcement personnel in how to exercise EPA's statutory penalty authorities, take into account a number of fact-specific considerations, e.g., the seriousness of the violation, the violator's good faith efforts to comply, any economic benefit gained by the violator as a result of its noncompliance, and a violator's ability to pay.

DATES: This final rule is effective on January 15, 2017.

EPA, [Procedures for Prioritization of Chemicals for Risk Evaluation Under the Toxic Substances Control Act](#)

Proposed rule. As required under section 6(b)(1) of the Toxic Substances Control Act (TSCA), EPA is proposing to establish a risk-based screening process and criteria that EPA will use to identify chemical substances as either High Priority Substances for risk evaluation, or Low-Priority Substances for which risk evaluations are not warranted at the time. The proposed rule describes the processes for identifying potential candidates for prioritization, selecting a candidate, screening that candidate against certain criteria, formally initiating the prioritization process, providing opportunities for public comment, and proposing and finalizing designations of priority. Prioritization is the initial step in a new process of existing chemical substance review and risk management activity established under recent amendments to TSCA.

DATES: Comments must be received on or before March 20, 2017.

OSHA, [Department of Labor Federal Civil Penalties Inflation Adjustment Act Annual Adjustments for 2017](#)

Final rule. The U.S. Department of Labor (Department) is publishing this final rule to adjust for inflation the civil monetary penalties assessed or enforced in its regulations, pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act). The Inflation Adjustment Act requires the Department to annually adjust its civil money penalty levels for inflation no later than January 15 of each year. The Inflation Adjustment Act provides that agencies shall adjust civil monetary penalties notwithstanding Section 553 of the Administrative Procedure Act (APA). Additionally, the Inflation Adjustment Act provides a cost-of-living formula for adjustment of the civil penalties. Accordingly, this final rule sets forth the Department's 2017 annual adjustments for inflation to its civil monetary penalties, effective January 13, 2017.

DATES: This final rule is effective on January 13, 2017. As provided by the Inflation Adjustment Act, the increased penalty levels apply to any penalties assessed after the effective date of this rule.

EPA, [Risk Evaluation Scoping Efforts Under TSCA for Ten Chemical Substances; Notice of Public Meeting](#)

Notice. EPA will hold a public meeting to receive input and information to assist the

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Agency in its efforts to establish the scope of risk evaluations under development for the ten chemical substances designated on December 19, 2016 for risk evaluations pursuant to the Toxic Substances Control Act (TSCA), as amended by the Frank R. Lautenberg Chemical Safety for the 21st Century Act. In particular, EPA is providing the public an opportunity to identify information specifically related to the conditions of use for the ten chemical substances (i.e., the circumstances under which a chemical substance is intended, known, or reasonably foreseen to be manufactured, processed, distributed in commerce, used, or disposed of). EPA plans to use this information as it develops the scoping documents for the TSCA risk evaluations of the ten chemical substances; these scoping documents must be issued within six months of the Federal Register notice that designated the chemical substances for a TSCA risk evaluation (i.e., for these ten chemical substances, the scoping documents must be issued by June 19, 2017).

DATES: Meeting Date. The meeting will be held on February 14, 2017 from 9:00 a.m. to 3:00 p.m.

EPA, [Delay of Effective Date for 30 Final Regulations Published by the Environmental Protection Agency Between October 28, 2016 and January 17, 2017](#)

Final rule; delay of effective dates. In accordance with the Presidential directive as expressed in the memorandum of January 20, 2017, from the Assistant to the President and Chief of Staff, entitled “Regulatory Freeze Pending Review,” this action temporarily delays until March 21, 2017, the

effective date of the regulations listed in the table below. EPA identified 30 regulations that meet those criteria.

DATES: This regulation is effective January 26, 2017. The effective date of each regulation listed in the table below is delayed to a new effective date of March 21, 2017.

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