



SMG Reg Watch

January 2018/Scott R. Smith

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 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? QUESTIONS, COMMENTS, ADDITIONAL INFORMATION: Scott R. Smith, scottr.smith@smithmanage.com.

Scott's Thoughts

The Christmas recess and vacations generally signal a regulatory and legislative slowdown in D.C. That enables those of us who write about these happenings to have time to reflect on what has happened in 2017 and think about what to expect in 2018. Without question, the Administration's regulatory rollbacks are the highlight of 2017. The planned repeal of the Obama administration's Clean Power Plan and the proposed revision of the "Waters of the United States" (WOTUS) rule are examples. The Administration has asked the public for input on these and some other regulatory actions. The Administration has stated that they have the authority under the Clean Air Act to repeal the Clean Power Plan. They estimate that a repeal will eliminate up to \$33B in compliance costs by 2030. EPA wants to revisit the WOTUS rule to minimize regulatory uncertainty while providing deference to the states in carrying out the goals of the CWA.

EPA's staffing, at least at the top of the organization chart, is almost complete. Except for Region 9, all of the Regional Administrator positions have been filled. Region 4's Administrator is Trey Glenn, Region 5 is Cathy Stepp and Region 3 is Cosmo Servidio. Key posts at EPA headquarters have been filled, including Bill Wehrum as Assistant Administrator for the Office of Air and Radiation. David Ross holds the post of Assistant Administrator for the Office of Water and Matt Leopold has been appointed as EPA General Counsel.

While EPA intends to follow-up on a promise to repeal the Clean Power Plan, the revision of WOTUS and numerous other deregulatory actions in 2018, we can't overlook the fact that mid-term elections are on the horizon in November and that could impact the breadth of legislative and regulatory actions this year. Let's see what actually gets done.

An important action recently taken by EPA is the announced intention to evaluate reforms to the Clean Air Act New Source Review pre-construction permitting program. This is a big deal! The Guidance was published on December 7, 2017 (Pearl Harbor Day). The Guidance Memo clarified the agency's interpretation of the Clean Air Act's New Source Review regulations, including outlining when and under what criteria the EPA will consider the emission projections that a source makes under the rules. EPA does not intend to substitute its judgement for

that of the owner or operator by “second-guessing the owner or operator’s emissions projections”. If the source follows the right process, EPA will not second guess the result.

EPA’s Superfund program will continue to be a point of emphasis in 2018. The Agency’s development of a list of priority sites and the emphasis by senior management to get those sites addressed could be an important accomplishment in 2018.

We need to keep an eye on infrastructure funding for 2018 and 2019. Various water associations are pushing ahead with plans to increase their funding requests for FY 19 asking for \$3 billion for each of the SRF (State Revolving Fund) programs. They hope to maintain SRF funding at the current 2017 funding. Reauthorization of the SRF programs could be included in the next Water Resources Development Act (WRDA) bill. Look for this bill in 2018. The SRF programs are focused around the Clean Water Act and Safe Drinking Water Act, while another source of revenue is the Water Infrastructure Finance and Innovation Act (WIFIA). The first round of the WIFIA program drew significant interest from the water and wastewater sector. WIFIA is meant to address some of the more complex challenges that communities have with infrastructure, like growth, water security and innovative technologies.

EPA’s electronic hazardous waste manifest system (e-Manifest) is scheduled to launch on June 30, 2018. This system is touted to facilitate electronic submission of hazardous waste manifests through a uniform national program covering all federal and state wastes requiring manifests. EPA thinks this system will reduce costs and effort required to prepare and handle paper manifests, produce more accurate and timely waste shipment information and allow for quicker notification of manifest discrepancies.

On January 18, EPA posted additional documents on its website, designed to assist manufacturers reporting for the Toxic Substances Control Act Inventory Notification Requirements final rule that became effective on August 11, 2017.

On January 26, 2018, EPA proposed a rule regarding testing regulations for air emission sources. The action proposes corrections and updates to regulations for source testing of emissions. The proposed rule includes corrections to testing provisions that contain inaccuracies, updates to outdated procedures and approved alternative procedures that provide testers enhanced flexibility.

Round 3 of the designations for the 2010 Sulfur Dioxide Primary National Ambient Air Quality Standard was announced on January 9. EPA completed SO₂ designations in 2013, the second round in 2016. In this third round, 6 areas were designated non-attainment, 23 areas designated unclassifiable and the rest are designated as being in attainment. It appears that nothing has changed in Kentucky.

EPA requested comments on their 2015 designations for ozone on January 5. EPA’s designations were provided to the states on or about December 20, 2017. Comments must be received on or before February 5, 2018.

Lexington

1405 Mercer Road
Lexington, KY 40511
859-231-8936
859-231-8997 fax

Louisville

1860 B Williamson Court
Louisville, KY 40223
502-587-6482
502-587-6572 fax





SMG Reg Watch

January 2018/Scott R. Smith

Federal Regulation Review

Air Quality Issues

EPA Responses to Certain State Designation Recommendations for the 2015 Ozone National Ambient Air Quality Standards: Notice of Availability and Public Comment Period

<https://www.gpo.gov/fdsys/pkg/FR-2018-01-05/pdf/2018-00024.pdf>

Environmental Protection Agency (EPA) has posted on their public electronic docket and internet website responses to certain state and tribal area designation recommendations for the 2015 Ozone National Ambient Air Quality Standards (NAAQS) (2015 Ozone NAAQS). These responses include the intended designations for the affected areas. The EPA is inviting the public to review and provide input on the intended designations during the comment period. EPA sent its responses directly to the states and tribes on or about December 20, 2017. The EPA intends to make final designation determinations for the areas of the country addressed by these responses no earlier than 120 days from the date the EPA notified states and tribes of the agency's intended designations.

Comments must be received on or before February 5, 2018.

Designations for the 2010 Sulfur Dioxide (SO₂) Primary National Ambient Air Quality Standard—Round 3

<https://www.gpo.gov/fdsys/pkg/FR-2018-01-09/pdf/2017-28423.pdf>

This final rule establishes the initial air quality designations for certain areas in the United States (U.S.) for the 2010 sulfur dioxide (SO₂) primary

National Ambient Air Quality Standard (NAAQS). The Environmental Protection Agency (EPA) is designating the areas as either Nonattainment, Attainment/Unclassifiable, or Unclassifiable. The designations are based on application of the EPA's nationwide analytical approach and technical analysis, including evaluation of monitoring data and air quality modeling, to determine the appropriate designation based on the weight of evidence for each area. The Clean Air Act (CAA or Act) directs areas designated Nonattainment by this rule to undertake certain planning and pollution control activities to attain the SO₂ NAAQS as expeditiously as practicable. This is the third of four expected sets of actions to designate areas of the U.S. for the 2010 SO₂ NAAQS.

The final rule is effective on April 9, 2018.

Revisions to Testing Regulations for Air Emission Sources

<https://www.gpo.gov/fdsys/pkg/FR-2018-01-26/pdf/2018-00470.pdf>

Proposed rule. This action proposes corrections and updates to regulations for source testing of emissions. The proposed rule includes corrections to testing provisions that contain inaccuracies, updates to outdated procedures, **and approved alternative procedures that provide testers enhanced flexibility.** The revisions will improve the quality of data but will not impose new substantive requirements on source owners or operators.

Comments. Written comments must be received by March 27, 2018.