



SMG Reg Watch

April 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

One of the most important initiatives made during the Scott Pruitt era at EPA occurred on April 30. On that date EPA released the Strengthening Transparency in Regulatory Science proposed rule. Many times, rules passed during the Obama years that contained data were hard for me to follow. I couldn't determine how the numbers were developed. I've written on this issue previously. Congress would ask EPA for the basis of the data used to develop rules and they would refuse to provide it. Now we know why. They didn't have it. The newly proposed rule provides that when EPA develops regulations, including regulations for which the public is likely to bear the cost of compliance, EPA should ensure that the data underlying those scientific studies that are pivotal to the action being taken are publicly available in a manner sufficient for independent validation. Comments on the proposed rule must be submitted before May 30, 2018. One aspect of the proposed rule that I disagree with and deserves comment is in *Section 30.9, May the EPA Administrator grant exemptions to this subpart?* Because of the difficulty in obtaining underlying data in the past, this provision makes it too easy to circumvent the overarching intent of the regulation. Perhaps Kentucky should adopt a similar statute or regulation. Now is the time to plant that seed during the Legislature's interim session.

In what is potentially a related issue, the DC Circuit in its boiler MACT saga dismissed an EPA assumption relating to the correlation between CO and HAPs because EPA had reached that conclusion based on data that the agency admitted being unreliable. This is embarrassing and should not be tolerated. How much more "tweaking" of data would be found if we took the time to look over some of the air and water standards promulgated over the past ten years?

Environmental, social and governance (ESG) issues are becoming more prevalent in US corporations. Recently the world's largest asset manager noted they were going to look very closely at companies plans to integrate ESG factors and impact principles into a company's long-term strategy and management. Public companies and those intending to go public can expect to be asked specific questions by existing and prospective asset managers that will human capital management, environmental responsibility, sustainability and risk, among others.

EPA is seeking applications for the 2018 Safer Choice Partner of the Year Awards. This program recognizes stakeholders who have advanced the goals of the Pollution Prevention Act by reducing pollution at its source through safer chemistry. There will be 5 categories:

- formulators/product manufacturers of both consumer and institutional/industrial products,
- purchasers and distributors,
- retailers,
- supporters (non-governmental organizations), and
- Innovators (chemical manufacturers).

All applications and accompanying materials must be received by June 27, 2018. Information can be found in the April 25th Federal Register. Let's get some winners from here in Kentucky!

Good news for Northern Kentucky. In the April 2, 2018 Federal Register, EPA approved Kentucky's air plan for the removal of reliance on reformulated gasoline in the Kentucky portion of the Cincinnati-Hamilton area. The Northern Kentucky Chamber worked very hard to make this decision possible. Hats off to the Northern Kentucky Chamber team!!

On April 10, 2018, EPA published a proposed rule dealing with national emission standards for hazardous air pollutants and new source performance standards for the petroleum refinery sector. This action proposes amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) Refinery MACT 1 and Refinery MACT 2 regulations to clarify the requirements of these rules and to make technical corrections and minor revisions to requirements for work practice standards, recordkeeping and reporting. It also proposes technical corrections for the New Source Performance Standards for petroleum refineries. Comments must be received on or before May 25, 2018.

This is a reminder that on March 13, 2018 a federal judge issued an order moving the compliance date for formaldehyde emission standards forward to June 1, 2018. Previously it had been December 12, 2018. You may be interested if you manufacture, import, sell, supply, offer for sale, test or work with the certification of hardwood plywood, medium-density fiberboard, particleboard and /or products containing composite wood materials in the US.

There are a couple of issues gaining traction with regulators that you should get additional information on and evaluate their impact to your facility.

- EPA recently added a site to the NPL solely based on the risk posed by vapor intrusion.
- The courts are expanding the scope of the Clean Water Act liability for contaminants discharged into groundwater.

On April 11, Arizona amended the state's administrative procedure laws to provide that courts are not required to give preference to an agency's legal interpretation in lawsuits over administrative decisions (HB 2238). This is

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the first state law of its kind. The lawmakers in Arizona are hopeful that it might serve as a model for other states or Congress. Why not Kentucky?

Kentucky is moving forward with their Triennial Review. There are consequences to property owners, project developers and others that will be located at or near waters designated Outstanding State Resource Waters and Exceptional Waters. We need to make sure KDOW gets those designations right. Other areas that are being discussed this year such as adopting EPA Aquatic Life criteria for ammonia, cadmium and carbaryl need to be looked at carefully. The Division of Water is proposing to adopt EPA Human Health Criteria for 94 pollutants. This is a bad idea. The last time I checked, this exercise was the states' responsibility, not EPA. Plus, we would get to rely on the lack of basis for the numbers that EPA developed. That idea should receive a solid rejection from the public and regulated communities.

Dates To Remember

- Aerosol can comments are due by May 15, 2018;
- Comments for Standards for Hazardous Air Pollutants and New Source Performance Standards for the petroleum refinery sector are due on or before May 25, 2018;
- Strengthening Transparency in Regulatory Science, comments due before May 30, 2018;
- June 1, 2018 is the implementation date for compliance standards for formaldehyde in composite wood products;
- EPA Safer Choice Partner of Year information due to EPA June 27, 2018.
- KY Triennial Review listening sessions. Tuesday May 15, 6:00 PM, Laurel Co. Public Library, London; Thursday May 17, 6:00 PM, Training Room B Energy Environment Cabinet, Frankfort; Thursday May 24, 6:00 PM Warren County Public Library, Bowling Green; and June 5, 6 PM, Marshall County Public Library, Calvert City Branch, Calvert City. Comments are due by June 6 at 4PM.

Regulatory Science

Strengthening Transparency in Regulatory Science

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes a regulation intended to strengthen the transparency of EPA regulatory science. The proposed regulation provides that when EPA develops regulations, including regulations for

which the public is likely to bear the cost of compliance, with regard to those scientific studies that are pivotal to the action being taken, EPA should ensure that the data underlying those are publicly available in a manner sufficient for independent validation. In this notice, EPA solicits comment on this proposal and how it can best be promulgated and implemented in light of existing law and prior Federal policies that already require increasing public access to data and influential

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scientific information used to inform federal regulation.

DATES: Comments must be received on or before May 30, 2018.

www.gpo.gov/fdsys/pkg/FR-2018-04-30/pdf/2018-09078.pdf

Universal Waste Regulations-Aerosol Cans Increasing Recycling: Adding Aerosol Cans to the Universal Waste Regulations

AGENCY: Environmental Protection Agency (EPA). **ACTION:** Proposed rule.

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is proposing to add hazardous waste aerosol cans to the universal waste program under the federal Resource Conservation and Recovery Act (RCRA) regulations. This proposed change, once finalized, would benefit the wide variety of establishments generating and managing hazardous waste aerosol cans, including the retail sector, by providing a clear, protective system for managing discarded aerosol cans. The streamlined universal waste regulations are expected to ease regulatory burdens on retail stores and others that discard hazardous waste aerosol cans; promote the collection and recycling of these cans; and encourage the development of municipal and commercial programs to reduce the quantity of these wastes going to municipal solid waste landfills or combustors.

DATES: Comments must be received on or before May 15, 2018. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before April 16, 2018.

<https://www.gpo.gov/fdsys/pkg/FR-2018-03-16/pdf/2018-05282.pdf>

Petroleum Refineries

National Emission Standards for Hazardous Air Pollutants and New Source Performance Standards: Petroleum Refinery Sector Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) Refinery MACT 1 and Refinery MACT 2 regulations to clarify the requirements of these rules and to make technical corrections and minor revisions to requirements for work practice standards, recordkeeping and reporting. This action also proposes technical corrections for the New Source Performance Standards (NSPS) for Petroleum Refineries.

DATES: Comments. Comments must be received on or before May 25, 2018. Under the Paperwork Reduction Act (PRA), comments on the information collection provisions are best assured of consideration if the Office of Management and Budget (OMB) receives a copy of your comments on or before May 10, 2018.

www.gpo.gov/fdsys/pkg/FR-2018-04-10/pdf/2018-06223.pdf

Northern Ky Reformulated Gasoline Air Plan Approval; KY: Removal of Reliance on Reformulated Gasoline in the Kentucky Portion of the Cincinnati-Hamilton Area

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving a State

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Implementation Plan (SIP) revision submitted on September 13, 2017, by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ) in support of the Commonwealth's separate petition requesting that EPA remove the federal reformulated gasoline (RFG) requirements for Boone, Campbell, and Kenton counties in the Kentucky portion of the Cincinnati-Hamilton, Ohio-Kentucky-Indiana 2008 8-hr ozone maintenance area (hereinafter referred to as the "Northern Kentucky Area" or "Area"). The SIP revision revises the Commonwealth's maintenance plan emissions inventory and associated motor vehicle emissions budgets (MVEBs), for years 2020 and 2030, to remove reliance on emissions reductions from the federal RFG program requirements, a program that the Commonwealth voluntarily opted into in 1995. The SIP revision also includes a non-interference demonstration evaluating whether removing reliance on the RFG requirements in the Northern Kentucky Area would interfere with the requirements of the Clean Air Act (CAA or Act). EPA is approving this SIP revision and the corresponding noninterference demonstration because EPA determined that the revision is consistent with the applicable provisions of the CAA. Please note that this final rule does not remove the federal RFG requirement. On April 18, 2017, Kentucky's Energy and Environment Cabinet submitted a separate petition to the EPA Administrator requesting to opt-out of the federal RFG program in the Northern Kentucky Area, and the Administrator will act on that petition in the near future.

DATES: This rule will be effective April 2, 2018
<https://www.gpo.gov/fdsys/pkg/FR-2018-04-02/pdf/2018-06557.pdf>

Safer Choice Partner of the Year Awards

2018 Safer Choice Partner of the Year Awards Program

AGENCY: Environmental Protection Agency (EPA). **ACTION:** Notice. **SUMMARY:** EPA is seeking applications for the 2018 Safer Choice Partner of the Year Awards. In 2015, EPA developed the Partner of the Year Awards to recognize Safer Choice stakeholders who have advanced the goals of the Pollution Prevention Act by reducing pollution at its source through safer chemistry. At the 2018 Partner of the Year Awards, Safer Choice will recognize stakeholder organizations from five broad categories: Formulators/ Product Manufacturers of both Consumer and Institutional/Industrial products, Purchasers and Distributors, Retailers, Supporters (e.g., nongovernmental organizations), and Innovators (e.g., chemical manufacturers).

Dates: All applications and accompanying materials must be received by Wednesday, June 27, 2018. Award winners will be recognized at a ceremony in the fall of 2018.

FOR FURTHER INFORMATION CONTACT: For technical information contact: Linda Rutsch, Chemistry, Economics and Sustainable Strategies Division, Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave. NW, Washington, DC 20460-0001; telephone number: (202) 343-9924; email address: rutsch.linda@epa.gov. For general information contact: The TSCA-Hotline, ABVI-Goodwill, 422 South Clinton Ave., Rochester, NY 14620; telephone number: (202) 554-1404; email address: TSCA-Hotline@epa.gov.

www.gpo.gov/fdsys/pkg/FR-2018-04-25/pdf/2018-08693.pdf

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