



## SMG Reg Watch

May 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](mailto:scottr.smith@smithmanage.com).

### *Scott's Thoughts*

It's triennial review time. This process forces us to look at all kinds of EPA water standards. These standards drive just about everything related to water for the regulated community. I've looked at these over the last 10 years and many times I've had a hard time figuring out where they came from. According to a high-ranking EPA official, one reason for this is that some of the numbers EPA used for the standards were developed by 3rd parties who may not have had a basis for the numbers. In some cases, EPA was simply provided a number without the basis. This revelation led the current EPA to develop a regulation entitled, "Strengthening Transparency in Regulatory Science," 83 Fed. Reg. 18768. Its intention is to strengthen the transparency of EPA's regulatory science. As you can imagine, this set heads spinning among members of the administrative state and the media. Would they have to go back and reestablish "real" standards? That's why the media, the regulatory state and 20 Senators on May 15 asked for an extension of the comment period. On May 25, EPA extended the comment on this regulation until August 16, 2018. It also announced that it will hold a public hearing on the proposed regulation on July 17, 2018 in Washington, DC. This will be fun to watch. I strongly recommend reading this proposed regulation and providing comments. Also, shouldn't we have a statute or regulation like this in Kentucky?

Closer to home, the Kentucky Division of Water is using EPA data for the development of Human Health Criteria for 94 pollutants. In a recent meeting, a group was told that Kentucky regularly accepts EPA's numbers because the Division has limited time and expertise to develop their own standard.

A toxicologist, Dr. Mark Klan from Louisville, performed a preliminary assessment of the methodology used by EPA to establish these. He noted, *"The methodology used by the USEPA to derive WQC (Water Quality Criteria) assumes relatively high exposure levels, and toxicity and bioaccumulation of COCs (Chemicals of Concern). Toxicokinetic parameters such as bioavailability of COCs from fish tissue, or chemical nature of the COCs in fish tissue or surface water do not appear to be addressed in the development of the WQC. Extrapolation of toxicity values from treated animal studies to application to human consumption entails multiple levels of uncertainty*

*factors. To account for the uncertainty, the toxicity of a COC is assumed to be much more potent than it may actually be. Use of relatively high levels of exposure coupled with an assumed high potency toxicity will result in an overestimation of potential health risks, and therefore more stringent WQC than are needed to protective of human health and the environment.”*

Other issues to be discussed in this year’s Triennial Review of KY’s Water Quality Standards include aquatic Life Criteria for Ammonia, Cadmium and Carbaryl, as well as the designation of 52 new Outstanding State Resource Waters and establishing 29 new Exceptional Waters. Also, being discussed is the use of the 2007 Copper Biotic Ligand Model for site specific copper criteria, adopting the CSO wet weather provision with EPA’s 1994 CSO Control Policy and EPA’s primary contact Recreation criteria for E. coli. The whole Water Quality Standard package can be commented on, so if you have something you were wondering about, now is the time to provide a comment or ask your question.

In other Kentucky regulatory news, the Division of Water is offering for comment broad based and substantial changes they have made to the following water regulations:

- 401 KAR 5:015 – Spills and bypasses to be reported to division
- 401 KAR 5:037 – Groundwater protection plans
- 401 KAR 5:039 – Repealer – 035, 057, 070, and 300
- 401 KAR 5:045 – Biochemically degradable wastes; treatment
- 401 KAR 5:050 – General provisions of KPDES Permitting Program
- 401 KAR 5:052 – Requirements applicable to cooling water intake structures for facilities regulated by Section 316(b) of the Clean Water Act, 33 U.S.C. 1326(b)
- 401 KAR 5:055 – Scope and applicability of the KPDES Program
- 401 KAR 5:060 – KPDES application requirements
- 401 KAR 5:065 – KPDES permit conditions
- 401 KAR 5:075 – Cabinet review procedures for KPDES permits
- 401 KAR 5:080 – Criteria and standards for the Kentucky Pollutant Discharge Elimination System
- 401 KAR 5:320 – Wastewater Laboratory Certification Program

The Division filed these proposed amended regulations with the Legislative Research Commission (LRC) on May 15, 2018 and anticipates that the proposed amended regulations will be published in the Kentucky Administrative Register on June 1, 2018, and then will be available on the LRC Regulation [website](#). The proposed amended regulations will also be available on the [Division website](#). Both websites can be accessed online through public libraries or any computer with Internet access. A public hearing, if requested, is scheduled for June 26, 2018 at 6:00 PM, DEP, Tng. Room A, 300, Sower Blvd., Frankfort, KY. Written comments are acceptable through June 30.

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The final ozone designations have been made by EPA. In Northern Kentucky, parts of Boone, Campbell and Kenton counties have been designated marginal non-attainment areas. Parts of the Louisville area containing parts of Bullet, Jefferson and Oldham counties have also been designated as marginal non-attainment areas. The marginal designation means that the counties have 3 years to attain compliance, the offset ratio for affected facilities will be 1.1:1 and the major source threshold for ozone compounds is 100T. According to Sean Alteri, Director of the Division for Air Quality, there has already been one facility impacted by the new designations. It will be important for these areas to work closely with DAQ to achieve attainment status within the 3-year period or the requirements will become more draconian for the regulated community.

Approval of Kentucky's Public Water System Supervision Program has been public noticed by EPA. Kentucky has revised its drinking water regulation defining a public water system. EPA is tentatively approving the revision to the Kentucky's Public Water System Supervision Program.

Portions of the pharmaceutical community that dispose of their products in some form or fashion need to be keeping an eye on EPA. The Agency has been working on finalizing a controversial rule since it was initially proposed it in August 2015. Last fall, EPA stated that it plans to issue the new rule in July 2018. The new rule could define pharmaceuticals as waste before a reverse distributor makes its waste determination. If promulgated in this manner, it could subject a health care facility to the hazardous waste reporting requirements of RCRA whenever it sends unused pharmaceuticals away from its facility, even if those pharmaceuticals may ultimately be reused. It will be interesting to see how this EPA deals with the upcoming regulation. Remember that the July date may be EPA-speak for some time in 2018.

In a matter related to the pharmaceutical industry, EPA has issued an information collection and comment request regarding the [NESHAP for pharmaceutical production](#). The same link will provide you access to another information collection request for comments on the NESHAP for Group I polymers and resins.

#### Dates To Remember

- August 16, 2018 comments due for Strengthening Transparency in Regulatory Science
- June 1, 2018 is the implementation date for compliance standards for formaldehyde in composite wood products
- June 26, 2018 Public Hearing, 401 KAR Chapter 5 proposed regulation modifications, if requested, 6:00 DEP, Tng. Room A, 300 Sower Blvd, Frankfort, KY
- June 30, 2018 written comments due on or before regarding 401 KAR Chapter 5 proposed regulation modifications
- June 15, 2018 comments due for emission standards surface coating of wood building products
- July 1, 2018 effective date for removal of N. KY from federal RFG program
- June 29, 2018 comments due on NSPS for Glass Manufacturing Plants
- June 29, 2018 comments due on the designation of KY portion of Louisville Unclassifiable Area PM2.5
- July 30, 2018 comments due on accidental release prevention requirements

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**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 scientific information used to inform federal regulation.**DATES:** Comments must be received on or before August 16, 2018.[www.gpo.gov/fdsys/pkg/FR-2018-04-30/pdf/2018-09078.pdf](http://www.gpo.gov/fdsys/pkg/FR-2018-04-30/pdf/2018-09078.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 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>**Lexington**

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**Redesignation of Louisville Portion of Unclassifiable Fine Particulate Matter Air Plan Approval and Air Quality Designation; KY; Redesignation of the Kentucky Portion of the Louisville Unclassifiable Area**

**AGENCY:** Environmental Protection Agency.

**ACTION:** Proposed rule.

**SUMMARY:** On May 4, 2018, the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet, Division for Air Quality (KDAQ), 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) unclassifiable area (hereinafter referred to as the “bi-state Louisville Area” or “Area”) to unclassifiable/attainment for the 2012 primary annual PM2.5 national ambient air quality standard (NAAQS). The bi-state Louisville Area consists of Jefferson County and a portion of Bullitt County in Kentucky as well as Clark and Floyd Counties in Indiana. EPA now has sufficient data to determine that the bistate Louisville Area is in attainment of the 2012 primary annual PM2.5 NAAQS. Therefore, EPA is proposing to approve Kentucky’s request and redesignate the Area to unclassifiable/attainment for the 2012 primary annual PM2.5 NAAQS based upon complete, quality-assured, and certified ambient air monitoring data showing that the PM2.5 monitors in the bi-state Louisville Area are in compliance with the 2012 primary annual PM2.5 NAAQS.

**DATES:** Comments must be received on or before June 29, 2018.

[www.gpo.gov/fdsys/pkg/FR-2018-05-30/pdf/2018-11567.pdf](http://www.gpo.gov/fdsys/pkg/FR-2018-05-30/pdf/2018-11567.pdf)

**2016 Effluent Guidelines Program Plan Final 2016 Effluent Guidelines Program Plan**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of availability.

**SUMMARY:** This notice announces the availability of the Environmental Protection Agency’s (EPA) Final 2016 Effluent Guidelines Program Plan (Final 2016 Plan). Section 304(m) of the Clean Water Act (CWA) requires the EPA to biennially publish a plan for new and revised effluent limitations guidelines, after public review and comment.

Notices existing industrial categories selected for effluent guidelines or pretreatment standards and provides a schedule for their development. The information and analyses from the EPA’s 2015 and 2016 Annual Reviews, in addition to input from public comments on the Preliminary 2016 Plan, were used in developing the Final 2016 Plan. The Final 2016 Plan and the 2015 and 2016 Annual Effluent Guidelines Review Reports can be found at [http:// www.epa.gov/eg/effluent-guidelinesplan](http://www.epa.gov/eg/effluent-guidelinesplan).

**Comment Request; Revisions to the RCRA Definition of Solid Waste**

**Agency Information Collection Activities; Submission to OMB for Review and Approval; Comment Request; Revisions to the RCRA Definition of Solid Waste (Renewal)**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** Revisions to the RCRA Definition of Solid Waste (EPA ICR No. 2310.06, OMB Control No. 2050–0202) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through April 30, 2018. Public comments were previously requested via the Federal Register on February 26, 2018 during a 60-day comment period. This notice allows for an additional 30 days for public

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comments. A fuller description of the ICR is given below, including its estimated burden and cost to the public. 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:** Additional comments may be submitted on or before June 6, 2018

<https://www.gpo.gov/fdsys/pkg/FR-2018-05-07/pdf/2018-09605.pdf>

### **Release of Documents Relating To National Ambient Air Quality Standards for Sulfur Oxides**

#### **Release of Final Documents Related to the Review of the Primary National Ambient Air Quality Standards for Sulfur Oxides**

**AGENCY:** Environmental Protection Agency (EPA). **ACTION:** Notice of availability.

**SUMMARY:** The Environmental Protection Agency (EPA) is announcing the availability of two final documents titled, Risk and Exposure Assessment for the Review of the Primary National Ambient Air Quality Standard for Sulfur Oxides (REA) and Policy Assessment for the Review of the Primary National Ambient Air Quality Standard for Sulfur Oxides (PA). The indicator for the current standard is sulfur dioxide (SO<sub>2</sub>). The REA describes the quantitative analyses of SO<sub>2</sub> exposures and health risks in this NAAQS review. Building on the Integrated Science Assessment for Sulfur Oxides—Health Criteria (ISA), completed in December 2017, the PA serves to “bridge the gap” between the scientific information and the judgments required of the Administrator in determining whether to retain or revise the existing primary NAAQS for SO<sub>2</sub>.

**DATES:** The REA and PA will be made available on or about May 9, 2018.

<https://www.gpo.gov/fdsys/pkg/FR-2018-05-15/pdf/2018-10242.pdf>

### **Proposed NESHAP Surface Coating of Wood Building Products**

#### **National Emission Standards for Hazardous Air Pollutants: Surface Coating of Wood Building Products Residual Risk and Technology Review**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule. **SUMMARY:** The U.S. Environmental Protection Agency (EPA) is proposing amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Surface Coating of Wood Building Products to address the results of the residual risk and technology review (RTR) that the EPA is required to conduct under the Clean Air Act (CAA). We found risks due to emissions of air toxics to be acceptable from this source category and determined that the current NESHAP provides an ample margin of safety to protect public health. We identified no new cost-effective controls under the technology review to achieve further emissions reductions. The EPA is proposing: To add an alternative compliance demonstration equation to amend provisions regarding electronic reporting; and to make technical and editorial changes. The EPA is proposing these amendments to improve the effectiveness of the NESHAP. This action also proposes a new EPA test method to measure isocyanate compounds in certain surface coatings. **DATES:** Comments. Comments must be received on or before June 15, 2018 unless a public hearing is requested by May 21, 2018. If a public hearing is requested, comments must be received on or before July 2, 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 June 15, 2018. Public Hearing. If a public hearing is requested by May 21, 2018, then we will hold a public hearing on May 31, 2018.

[www.gpo.gov/fdsys/pkg/FR-2018-05-16/pdf/2018-09080.pdf](https://www.gpo.gov/fdsys/pkg/FR-2018-05-16/pdf/2018-09080.pdf)

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### Information Collection Request NSPS for Glass Manufacturing Plants

#### Information Collection Request Submitted to OMB for Review and Approval; Comment Request; NSPS for Glass Manufacturing Plants (Renewal)

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice.

**SUMMARY:** The Environmental Protection Agency (EPA) has submitted an information collection request (ICR)— NSPS for Glass Manufacturing Plants (Renewal), EPA ICR Number 1131.12, OMB Control Number 2060–0054—to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act. This is a proposed extension of the ICR, which is currently approved through May 31, 2018. Public comments were previously requested via the Federal Register on June 29, 2017 during a 60-day comment period. This notice allows for an additional 30 days for public comments. A fuller description of the ICR is given below, including both its estimated burden and cost to the public. An agency may neither conduct nor sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. **DATES:** Additional comments may be submitted on or before June 29, 2018.

<https://www.gpo.gov/fdsys/pkg/FR-2018-05-30/pdf/2018-11546.pdf>

### Accidental Release Requirements Clean Air Act

#### Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act

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

**SUMMARY:** The Environmental Protection Agency (EPA) is requesting public comment on several proposed changes to the final Risk Management Program Amendments rule (Amendments rule) issued on January 13, 2017. EPA is proposing to rescind amendments relating to safer technology and alternatives analyses, third-party audits, incident investigations, information availability, and several other minor regulatory changes. EPA is also proposing to modify amendments relating to local emergency coordination and emergency exercises, and to change the compliance dates for these provisions. **DATES:** Comments. Comments and additional material must be received on or before July 30, 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 June 29, 2018. **Public testimony:** Send requests to present oral testimony by June 8, 2018. **Public Hearing.** The EPA will hold a public hearing on this proposed rule on June 14, 2018 in Washington, DC.

[www.gpo.gov/fdsys/pkg/FR-2018-05-30/pdf/2018-11059.pdf](https://www.gpo.gov/fdsys/pkg/FR-2018-05-30/pdf/2018-11059.pdf)

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