



## SMG Reg Watch

June 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*

Greenhouse gas emissions in 2016 were 12% below 2005 levels. Also, emissions decreased from 2015 to 2016 by 2.5%. This information was published by [EPA](#). These decreases are attributed to a reduction in emissions from fossil fuel combustion and the loss of innumerable jobs in Appalachia.

EPA is placing renewed emphasis on encouraging self-audits and disclosures. EPA has stated the following potential advantages: Waiver of 100% of the gravity based civil penalty; waiver of the economic-benefit civil penalty where EPA deems economic gains from noncompliance insignificant; declining to impose time limits on audit completion and declining to require an affirmative admission of violation. The Agency has developed a [new audit policy](#), which provides additional flexibility and benefits to new owners of regulated facilities.

The TV show *Fixer Upper* just got wacked by EPA. I guess the agency didn't have enough to keep them busy. EPA announced it had reached a settlement with Magnolia Waco Properties. The brand is led by Chip and Joanna Gaines. They were cited for not adhering to the Lead Renovation, Repair and Painting Rule, 40 CFR 745.80. Magnolia Homes fully cooperated with EPA and took immediate action to remedy its alleged noncompliance. The company agreed to pay a civil penalty of \$40,000 and spend at least \$160,000 in performing a Supplemental Environmental Project which is lead abatement work in low income areas of North Waco, Texas.

US Fish & Wildlife in April issued new guidance to its regional directors to facilitate the evaluation and negotiation of the Endangered Species Action Section 10(a)(1)(b) [incidental take permits](#) (ITPs). The guidance memorandum poses the following three questions for assessing whether a habitat modification may trigger the need for a Section 10 Permit:

- Is the modification of habitat significant?
- If so, does that modification also significantly impair an essential behavior pattern of a listed species?
- Is the significant modification of the habitat, with a significant impairment of an essential behavior pattern, likely to result in the actual killing or injury of wildlife?

EPA launched its new Hazardous Waste Electronic Manifest (e-Manifest) System on June 30, 2018. This action follows the 2012 Hazardous Waste Electronic Manifest Establishment Act and two final rules issued by EPA in

2014 and 2017. The e-Manifest is required in all states, whether a state is presently authorized to run the RCRA program or not; and currently authorized states will be required to amend their rules to fit the program. It would be a good idea to check in with your state waste management program staff to ensure you are in compliance and understand any applicable compliance schedules.

On June 11, 2018, the U.S. District Court of the Southern District of Georgia issued a preliminary injunction preventing implementation of the USEPA's 2015 Waters of the US rule in 11 states. The Court held that if the WOTUS rule became effective the states would suffer irreparable harm in both a "loss of sovereignty and unrecoverable monetary losses." It would be interesting to read that decision to try to determine what, "loss of sovereignty" means.

The Council on Environmental Quality (CEQ) opened a 30-day comment period to solicit comments on potential revisions to its regulations for implementing NEPA. Every aspect of the NEPA process is open for comment. This is a great opportunity to provide the Agency input for a program where changes are long overdue. Comments are due on July 20.

The Trump Administration has released its [Spring 2018 Unified Agenda of Regulatory and Deregulatory Actions](#). This document is easy to work through. You can find what issues that are coming up, the status of rulemaking, timetable for actions and a good description and background of the issues. It provides information on regulations that are under development, completed or canceled since the last agenda. It also reviews regulations with small business impacts. This document comes out about every six months.

On June 8 EPA published a Proposed Action that the current standard for sulfur oxides would not be revised. Comments must be received on or before July 23, 2018. The current primary standard is set at a level of 75 ppb, as the 99<sup>th</sup> percentile of daily maximum 1-hour SO<sub>2</sub> concentrations, averaged over 3 years. I was hopeful that the 1-hour part of the standard would be pushed back to at least 8 hours. A big concession to the swamp and their supporters.

EPA published an Advance Notice of proposed rulemaking regarding how the agency should determine the cost/benefit of proposed rules. Most statutes require or allow some consideration of cost and benefits when setting pollution standards but there is variation in terminology and specificity provided in each law. EPA is soliciting comment on whether and how EPA should promulgate regulations that provide a consistent and transparent interpretation relating to this issue. Comments are due July 13, 2018. This will be a good one to keep an eye on. Let your representative in the Congressional Delegation know that this is important. This is an easy one that could languish if it doesn't get Congress to push it. Very few of the EPA staff will be pushing this to get done.

The Hazardous Substances Spill Prevention requirements found in the Clean Water Act was public noticed on June 25. EPA states in the notice that it is proposing no new requirements. While no new requirements may be forthcoming from EPA's side, I strongly suggest that you follow the developments of this action. The Federal Register notice provides a good review of the statutory authority and delegation of authority as well as legislative

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and regulatory background. The notice also provided information regarding litigation background. Comments must be received on or before August 24, 2018.

For the first time that I can remember, Kentucky's environmental agency did not have any regulations in the State Administrative Register for July. Let's see if they make up for it in August. Stay tuned.

#### Dates To Remember

- July 13, 2018 comments due on how to determine cost/benefits of EPA proposed rules;
- August 16, 2018 comments due Strengthening Transparency in Regulatory Science; and
- August 24, 2018 comments due on Hazardous Substances Spill Prevention requirements.

#### 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.

<http://www.gpo.gov/fdsys/pkg/FR-2018-04-30/pdf/2018-09078.pdf>

##### Increasing Consistency and Transparency in Considering Costs and Benefits in the Rulemaking Process

**AGENCY:** Environmental Protection Agency.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** EPA promulgates regulations under authority provided in the federal environmental statutes such as the Clean Air Act (CAA), Clean Water Act (CWA), Safe Drinking Water Act (SDWA), and many others. Most statutory provisions require or allow some consideration of cost and benefits when setting pollution standards, but there is variation in terminology and specificity provided in each law regarding the nature and scope of the cost and benefit considerations. In this advance notice of proposed rulemaking (ANPRM), EPA is soliciting comment on whether and how EPA should

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promulgate regulations that provide a consistent and transparent interpretation relating to the consideration of weighing costs and benefits in making regulatory decisions in a manner consistent with applicable authorizing statutes. EPA is also soliciting comment on whether and how these regulations, if promulgated, could also prescribe specific analytic approaches to quantifying the costs and benefits of EPA regulations. This ANPRM does not propose any regulatory requirements.

**DATES:** Comments must be received on or before July 13, 2018

### 2016 Effluent Guidelines Program Plan

#### Final 2016 Effluent Guidelines Program Plan

**AGENCY:** Environmental Protection Agency.

**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 <https://www.epa.gov/eg/effluent-guidelines-plan>

### NEPA Regulation Update

#### Update to the Regulations for Implementing the Procedural Provisions of the National Environmental Policy Act

**AGENCY:** Council on Environmental Quality.

**ACTION:** Advance notice of proposed rulemaking.

**SUMMARY:** The Council on Environmental Quality (CEQ) is considering updating its implementing regulations for the procedural provisions of the National Environmental Policy Act (NEPA). Over the past four decades, CEQ has issued numerous guidance documents but has amended its regulations substantively only once. Given the length of time since its NEPA implementing regulations were issued, CEQ solicits public comment on potential revisions to update the regulations and ensure a more efficient, timely, and effective NEPA process consistent with the national environmental policy stated in NEPA.

**DATES:** Comments should be submitted on or before July 20, 2018.

### Semi-Annual Regulatory Agenda

#### Spring 2018 Unified Agenda of Regulatory and Deregulatory Actions

**AGENCY:** Environmental Protection Agency.

**ACTION:** Semiannual regulatory agenda.

**SUMMARY:** The Environmental Protection Agency (EPA) publishes the Semiannual Agenda of Regulatory and Deregulatory Actions online at

<https://www.reginfo.gov/public/do/eAgendaMain> to update the public. This document contains information about:

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

### Review of Ambient Air Quality Standards for Sulfur Oxides

#### Review of the Primary National Ambient Air Quality Standards for Sulfur Oxides

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

**ACTION:** Proposed action.

**SUMMARY:** Based on the Environmental Protection Agency's (EPA's) review of the air quality criteria addressing human health effects

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and the primary national ambient air quality standard (NAAQS) for sulfur oxides (SOX), the EPA is proposing to retain the current standard, without revision.

**DATES:** Comments must be received on or before July 23, 2018. If, by June 15, 2018, the EPA receives a request from a member of the public to speak at a public hearing concerning the proposed decision we will hold a public hearing, with information about the hearing provided in a subsequent notice in the Federal Register.

### Spill Prevention Regulations

#### Clean Water Act Hazardous Substances Spill Prevention

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

**ACTION:** Proposed action.

**SUMMARY:** The Environmental Protection Agency (EPA or the Agency) is proposing to establish no new requirements under Clean Water Act (CWA), section 311. This section directs the President to issue regulations to prevent discharges of oil and hazardous

substances from onshore and offshore facilities, and to contain such discharges. On July 21, 2015, EPA was sued for failing to comply with the alleged duty to issue regulations to prevent and contain CWA hazardous substance discharges. On February 16, 2016, the United States District Court for the Southern District of New York entered a Consent Decree between EPA and the litigants that required EPA to sign a notice of proposed rulemaking pertaining to the issuance of hazardous substance regulations and take final action after notice and comment on said notice. Based on an analysis of the frequency and impacts of reported CWA HS discharges and the existing framework of EPA regulatory requirements, the Agency is not proposing additional regulatory requirements at this time. This proposed action is intended to comply with the Consent Decree and to provide an opportunity for public notice and comment on EPA's proposed approach to satisfy the CWA requirements.

**DATES:** Comments must be received on or before August 24, 2018.

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