



SMG Reg Watch

October 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 KY Department for Environmental Protection has been busy. They currently have new regulations published for comment for hazardous waste handlers and changes to the hazardous waste permit program. The proposed changes can be found using the links below.

[401 KAR 039:060](#), General Requirements
[401 KAR 039:080](#) Hazardous waste handlers
[401 KAR 039:090](#) Hazardous waste permit program

The underground storage tank program has several changes that owners and operators of tanks need to review closely. Changes can be found by using the links below.

[401 KAR 042:005](#) Definitions
[401 KAR 042:020](#), UST System Requirements, notification, registration and annual fees
[401 KAR 042:060](#), UST system release and corrective action requirements,
[401 KAR 042:250](#), Petroleum Storage Tank Environmental Assurance Fund reimbursement,
[401 KAR 042:330](#), Small Owners Tank Removal Account

Remember that the Division of Waste Management and Division For Air Quality do not have the "No more stringent than federal regulation" requirements like the Division of Water and Surface Mining. There are provisions in these proposed regulations that are more stringent than the federal regulations, so take a good look at these if you own or operate USTs. For example, Kentucky requires owners to notify the cabinet prior to an installation of a UST or an entire piping run and requires documentation supporting the transfer of a UST system, if requested. There are definitions that the Cabinet feels are more stringent for clarification and consistency in the implementation of the program. Also, Kentucky requires a PE or PG to certify the assessment reports. Groundwater or vapor monitoring in lieu of an assessment at permanent closure is not an option for an owner or operator in Kentucky.

The proposed UST regs will change the existing regulation by establishing the UST system, operation, release detection, delivery prohibition and annual fee requirements in addition to establishing the design, construction, installation and registration as was previously established. Registration forms are no longer required to be notarized and the Certificate of Registration and Reimbursement Eligibility (CORRE) has been removed from the regulation. In addition, these amendments will adopt the federal mandate for financial responsibility of owners and operators of UST systems. **The public hearing for these proposed regulations will be held on November 27, 2018 at 6:00 PM at 300 Sower Blvd, 1st Floor, Training Room B, Frankfort, KY 40601.**

The changes to Kentucky's Waste Handler regulations will correct typographical errors and citation omissions and add additional waste codes requested by the Blue Grass Army Depot for the treatment and disposal of nerve agents. Specific changes to the hazardous waste permit program include a change to the limit established for Lead. It was revised from 0.15 to 0.015. Concentration limits established in 40 CFR 264.94 are replaced with concentration limits consistent with the current Kentucky environmental performance standards, making portions of this regulation is more stringent than the federal regulations.

My comments on Kentucky's proposed regulations are not intended to be all encompassing, so read them carefully and provide comments that you deem necessary.

On November 18, 2016, EPA finalized a rule that updated the previously existing refrigerant management requirements and extended requirements that had applied only to refrigerants containing an ozone depleting substance to substitute refrigerants that are subject to the venting prohibition. On October 1, 2018, EPA published a proposed rule revising the appliance maintenance and leak repair provisions, so they apply only to equipment using refrigerant containing a class 1 or class II substance. The proposal also revises the list of practices that must be followed for refrigerant releases to be considered de minimis. EPA is asking for comment as to whether they should resend in full the 2016 Rule's extension requirements. Also, under consideration is the proposal to extend by six to twelve months the **January 1, 2019 compliance date** for appliances containing only substitute refrigerants. Watch for individual states to attempt to fill this regulatory void. Of course, California jumped right in (see California Cooling Act (SB 1013)). Also New York, Maryland and Connecticut have also recently announced plans to take actions like California. **Written comments on EPA's proposed rule must be received by November 15, 2018.**

An interesting section in the Administration's *National Strategy for Counterterrorism of the United States (Strategy)* was released October 4. This document makes specific references to animal rights extremism and environmental extremism as domestic security threats. If you think this is an overaction, consider the example set by one of the animal rights organizations which staged a branding in which a searing hot iron heated to 3000 degrees Fahrenheit was plunged into the activist's arms and shoulders..." Yes, we need to know that folks like this are out there and what they are up to.

Heads up on OSHA's silica rule. If you recall, the Permissible Exposure Limit for respirable crystalline was reduced from 100 to 50 micrograms per cubic meter in June 2016. Most of the standards relating to this rule went into effect this past summer. Make sure you have assessed the 8-hour time weighted average exposure for all

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employees who may reasonably be exposed. Employers should have written exposure plans and make sure you provide you employees with the required training, respiratory protection and medical surveillance. Be smart and make sure you are covered.

The Trump Administration released its [Fall 2018 Unified Agenda of Regulatory and Deregulatory Actions](#). This regulatory agenda, “reports on the actions administrative agencies plan to issue in the near and long term...” If you are interested. You can find the schedule for issues such as Waters of the US, Management Standards for Hazardous Waste Pharmaceuticals and others.

TMDLs are difficult enough to maneuver for point sources. How agencies might address natural background found in streams will be another challenge for regulatory agencies and industry. California is taking TMDL to another level. They intend to incorporate TMDL specific requirements into the industrial storm water general permit. A good analysis of this action is contained in Hunton Andrews Kurth, The Nickel Report. The title of the article is, [“A Seismic Change is Coming to California’s General Industrial Stormwater Permit.”](#)

The Corps of Engineers recently issued a Regulatory Guidance Letter that set out factors that should be considered by district engineers when determining the amount of mitigation credits that may be allowed for removal of dams or other structures in rivers and streams. The [National Law Review](#) details this action.

EPA announced in the October 12 Federal Register expedited approval of alternative test procedures for the analysis of contaminants under the Safe Drinking Water Act. EPA is using this authority to make 100 additional methods available for analyzing drinking water samples. This rule should reduce monitoring costs while maintaining public health protection.

EPA is proposing for reconsideration amendments to the NSPS pertaining to emission standards for new, reconstructed, and modified sources in the oil and natural gas sector. This regulation proposes amendments and clarifications to the 2017 reconsideration rule relating to fugitive emissions requirements, well site pneumatic pump standards and the requirements for certification of closed vent systems by a professional engineer. Comments must be received before December 17, 2018.

Another rulemaking to keep an eye on is EPA’s proposed rule for National Emission Standards for Hazardous Air Pollutants for Surface Coating of Large Appliances; Printing, Coating and Dyeing of Fabrics and Other Textiles and surface coating of metal Furniture Residual Risk and Technology Reviews. In this rule, EPA is proposing to find the risks due to emissions of air toxics from these source categories under the current standards to be acceptable and that the standards provide an ample margin of safety to protect public health. No revisions are anticipated. Comments closed on October 12.

In what may be a significant benefit to state agencies and universities, the Fifth Circuit held that sovereign immunity protected several state agencies and universities from CERCLA liability. The case was *United States Oil Recovery Site Potentially Responsible Parties Group v. Railroad Commission of Texas*, No. 17-20361, 2018 WL 3649653 (August 1, 2018). We can only hope that we can get a decision like this in Kentucky.

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A draft of the “Integrated Science Assessment for Particulate Matter,” (EPA/600/R-18/179) has been released for comment by EPA. This document, in conjunction with additional technical and policy assessments, provides the scientific basis for EPA’s decisions on the adequacy of the current NAAQAS and the appropriateness of possible alternative standards.

In an October 30 action EPA published amendments to the 2016 Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills. EPA is proposing to amend the 2016 Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills.

Dates To Remember

- Venting or Releasing Ozone Depleting & Substitute Refrigerants comments due November 15.
- Proposed Ky. Underground Storage Tank Rules public hearing November 27, 2018, 6:00 p.m., at 300 Sower Blvd, 1st floor, Training Room B, Frankfort, KY. The public comment period extends through November 30, 2018.
- Oil & Gas Sector: Emission Standards for New, Reconstructed and Modified Sources Reconsideration. Comments must be received on or before December 17, 2018.
- Municipal Solid Waste Landfills. Adopting subpart Ba Requirements in Emission Guidelines. Comments must be received on or before December 14, 2018.

Refrigerant Management

Protection of Stratospheric Ozone: Revisions to the Refrigerant Management Program’s Extension to Substitutes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Clean Air Act (CAA) prohibits knowingly venting or releasing ozone-depleting and substitute refrigerants in the course of maintaining, servicing, repairing, or disposing of appliances or industrial process refrigeration. On November 18, 2016, EPA finalized a rule that updated the existing refrigerant management requirements and extended requirements that

previously applied only to refrigerants containing an ozone depleting substance (ODS) to substitute refrigerants such as hydrofluorocarbons that are subject to the venting prohibition (i.e., those that have not been exempted from that prohibition). The Agency is revisiting the aspects of the 2016 Rule that apply to equipment containing such substitute refrigerants. This action proposes changes to the legal interpretation that supported that rule and amendments to the regulations based on the revised interpretation. More specifically, in connection with the proposed changes to the legal interpretation, EPA is proposing to revise the appliance

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maintenance and leak repair provisions, so they apply only to equipment using refrigerant containing a class I or class II substance. Based on this proposed limitation of the leak repair requirements, this document further proposes to revise the list of practices that must be followed in order for refrigerant releases to be considered de minimis to clarify that the reference to following leak repair practices only applies to equipment that contains ODS refrigerant. EPA is also taking comment on whether, in connection with the proposed changes to the legal interpretation, the 2016 Rule's extension of subpart F refrigerant management requirements to such substitute refrigerants should be rescinded in full. Additionally, EPA is proposing to extend by six to twelve months the January 1, 2019 compliance date for when appliances containing only substitute refrigerants subject to the venting prohibition must comply with the appliance maintenance and leak repair provisions.

DATES: Written comments must be received by November 15, 2018. EPA will hold a public hearing on or before October 16, 2018. The hearing will be held in Washington, DC. More details concerning the hearing can be found at www.epa.gov/section608.
<https://www.gpo.gov/fdsys/pkg/FR-2018-10-01/pdf/2018-21084.pdf>

Oil & Gas Sector Part 60, subpart 0000a

Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources Reconsideration **AGENCY:** Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes reconsideration amendments to the new source performance standards (NSPS) at 40 Code of Federal Regulations (CFR) part 60, subpart 0000a (2016 NSPS 0000a). The

Environmental Protection Agency (EPA) received petitions for reconsideration on the 2016 NSPS 0000a. In 2017, the EPA granted reconsideration on the fugitive emissions requirements, well site pneumatic pump standards, and the requirements for certification of closed vent systems by a professional engineer based on specific objections to these requirements. This action proposes amendments and clarifications as a result of reconsideration of these issues.

The proposed amendments also address other issues raised for reconsideration and make technical corrections and amendments to further clarify the rule.

DATES: Comments. Comments must be received on or before December 17, 2018

Integrated Science Assessment for Particulate Matter

Integrated Science Assessment for Particulate Matter (External Review Draft)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public comment period.

SUMMARY: The Environmental Protection Agency (EPA) is announcing a public comment period for the draft document titled, "Integrated Science Assessment for Particulate Matter (External Review Draft)" (EPA/600/R-18/179). The draft document was prepared by the National Center for Environmental Assessment (NCEA) within EPA's Office of Research and Development (ORD) as part of the review of the primary (health-based) and secondary (welfare-based) National Ambient Air Quality Standards (NAAQS) for particulate matter. The welfare-based effects evaluated consist of non-ecological effects, specifically visibility impairment, climate effects, and effects on materials. The Integrated Science Assessment (ISA), in conjunction with additional

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technical and policy assessments, provides the scientific basis for EPA's decisions on the adequacy of the current NAAQS and the appropriateness of possible alternative standards. EPA is currently developing a separate ISA to support the secondary NAAQS review for ecological effects for oxides of nitrogen, oxides of sulfur, and particulate matter. EPA is releasing this draft document to seek review by the Clean Air Scientific Advisory Committee (CASAC) and the public. In addition, the date and location of a public meeting for CASAC review of this document will be specified in a separate Federal Register notice. This draft document is not final and it does not represent, and should

not be construed to represent, any final Agency policy or views. When revising the document, EPA will consider any public comments submitted during the public comment period specified in this notice.

DATES: The public comment period begins on October 23, 2018 and ends December 11, 2018.

Municipal Solid Waste Landfills-Air Quality Adopting Subpart Ba Requirements in Emission Guidelines for Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency

ACTION: Proposed rule.

SUMMARY: In this action, the Environmental Protection Agency (EPA) proposes to amend the 2016 Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills ("MSW Landfills EG"). The requirements for state and federal plans implementing the MSW Landfills EG were adopted from 1975 regulations, referred to herein as the "old implementing regulations," which are cross-

referenced in the MSW Landfill EG. In a separate regulatory proposal published in the Federal Register in August 2018, the EPA proposed changes to modernize the old implementing regulations governing emission guidelines under a new subpart. This action proposes to update the cross-references to the old implementing regulations in the MSW Landfills EG to harmonize with the proposed new timing and completeness requirements for state and federal plans.

DATES: Comments. Comments must be received on or before December 14, 2018.

Kentucky Waste Regulations

Kentucky: Proposed Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: Kentucky has applied to the Environmental Protection Agency (EPA) for final authorization of changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA), as amended. EPA has reviewed Kentucky's application and has determined that these changes satisfy all requirements needed to qualify for final authorization. Therefore, we are proposing to authorize the State's changes. EPA seeks public comment prior to taking final action.

DATES: Comments must be received on or before October 22, 2018.

<https://www.gpo.gov/fdsys/pkg/FR-2018-09-21/pdf/2018-20533.pdf>

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