



SMG Reg Watch

March 2019/ 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

KY LEGISLATIVE WRAP-UP

There were more than 200 bills passed during the 30-working day session which ended Thursday, March 29. The Governor only vetoed two of them. The first vetoed bill related to administrative regulations and the timing in which they are approved. The General Assembly overrode the veto by an easy margin on the last day. The second veto related to how post-secondary institutions dispose of property. The Governor noted that it would create an "unnecessary burden" for universities. The General Assembly did NOT override.

If you are curious about the details of the Bills listed in this section, I recommend that you download the entire Bill and review it from the links provided. Here is a list and description of Bills we were tracking that passed and were signed by the Governor:

The most prominent piece of legislation was the passage of [SB1](#), *The School Safety and Resiliency Act*. The goal of this Bill is to improve student safety by boosting safety and prevention training, promoting the assignment of a school resource officer to every school, increasing awareness of suicide prevention efforts, encouraging collaboration with law enforcement and hiring more counselors in school districts.

Solar energy. [SB 100](#), dubbed the net metering bill, will change how much owners of solar power systems are reimbursed for electricity they add to the power grid. The Public Service Commission will now set the compensation rate. The measure will grandfather in those participating in the current net metering structure for 25 years. In addition, those who install solar panels within the next year will be covered by the grandfather clause.

Administrative Regulations. [HB 4](#) has numerous provisions. Some of those are included herein. The Administrative Regulation Review Subcommittee (ARRS) staff will be required to submit to the committee's co-

chairs an annual report that contains both filed and effective administrative regulations that were found deficient. The bill clarifies the ARRS's authority to review an effective regulation if requested by a subcommittee member, extends emergency regulation deadlines to 270 days; adds one month to a filed regulation's public comment period, allowable public hearing days, and statement of consideration due date; and requires the regulations complier to publish an expired regulation list on September 1, 2020 and every six months thereafter.

Pregnancy Accommodation Bill. [SB 18](#) made it unlawful for an employer to fail to accommodate an employee affected by pregnancy, childbirth or a related medical condition and requires employers to provide notice to all employees regarding the right to be free from discrimination for pregnancy, childbirth and related medical conditions.

WOTUS

The most significant occurrence in February rulemaking, was the publication in the Federal Register of the proposed Waters of the United States (WOTUS) rule on February 14. This puts the proposed rule on a regulatory track with specific requirements. If you recall, the Clean Water Act (CWA) does not define WOTUS but the proposed rule will determine which bodies of water fall under the jurisdiction of the agencies for regulations under various federal programs. These programs include The National Pollutant Discharge Elimination System Program, National and Local Pretreatment Standards, Dredge or Fill Discharge Permit Program, Sewage Sludge Use and Disposal Program and Water Quality Management.

Here are some areas to consider when deciding on whether to comment on the proposal. The number of wetlands subject to federal jurisdiction will decrease, as the Agencies are largely following Justice Scalia's narrower test for federal jurisdiction. The proposed rule favors predictability and certainty in casting aside the "significant nexus" test. In support, the agency has cited to a finding by the Science Advisory Board that there is a "gradient of connectivity" between waters and the Agencies have concluded that the new rule provides a predictable and implementable framework that enables them to dispose of the "significant nexus" evaluation. The applicability of the rule to infrequently flowing streams and tributaries has changed. The new proposed rule covers tributaries only if they contribute flow to a navigable water "in a typical year". A "typical year" means "within the normal range of precipitation over a rolling thirty year period for a particular geographic area." Make sure you review the exclusions found in the proposed rule. There are numerous exclusions listed. See if any are applicable to your situation.

Comments have been received but the formal comment period will close April 15. This summary is meant to provide you with a general overview of the proposed rule. If you have the potential to be impacted, read the proposed rule and if you have questions or concerns, submit a comment. Here is an informational link [WOTUS Links](#). I have been reviewing comments filed to date. Most lack technical support and are against the rule. I have

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not seen comments on the specifics of the proposed rule from states or potentially impacted organizations other than those requesting an extension of the comment period. If your company or trade association is impacted, either positively or negatively by this rule, submit your comments.

EPA & Corps Withdraw appeals on WOTUS Delay Rule

EPA and the Corps of Engineers have voluntarily dismissed their appeals of district court rulings striking down the agencies' joint rulemaking delaying the 2015 Waters of the US Rule. This means that the 2015 Rule is applicable in a patchwork of states but not in all states. The two agencies have engaged in two rulemakings that will repeal and replace the 2015 WOTUS Rule.

Corps to Accelerate Wetlands Permitting

Mitigation bank credits may become more readily available to builders, developers and other permittees after new guidance was issued in late February by the Corps of Engineers and EPA. The Corps issued Regulatory Guidance Letter 19-01 in collaboration with EPA on February 22, 2019. As a result of the guidance, mitigation banks that have been approved and constructed may be able to make more credits available for sale, even in advance of full achievement of ecological standards. This could make more credits available for permitting purposes during the development of the mitigation banks. This could reduce permitting timeframes for infrastructure, energy and other priority activities.

OSHA Whistleblowers

The number of whistleblower complaints filed has increased by 29% over the last five years from 7,408 complaints in 2014 to 9,566 complaints in 2018. OSHA's increased workload combined with the loss of investigators has slowed the agency in responding to complaints. OSHA has 90 days to complete its whistleblower investigations but last year it took OSHA an average of 272 days to make determinations on complaints. Employers should make sure policies and procedures are in place regarding how to log, track and handle internal complaints that could lead to federal whistleblower claims.

Asbestos

Certain public health and environmental organizations sued to require EPA to initiate an asbestos reporting rule under TSCA. These groups want to compel importers, manufacturers and possessors of asbestos and asbestos containing materials to submit reports on the amounts of asbestos imported and used, the sites where use occurs and the nature of the use and the resulting potential for exposure of workers and the public. In February, Attorneys General of 14 states and Washington, DC petitioned the EPA to initiate similar rulemaking on asbestos reporting.

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PFAS

The US House and Senate has introduced legislation to classify per-and polyfluoroalkyl substances (PFAS) as hazardous substances under Superfund. These substances are found in products such as non-stick pans, food packaging and rain gear as well as firefighting foam. If these substances are reclassified, Northeastern University estimates that there are 172 PPFAS sites in 40 states across the US. Northeastern states that all data gathered came from government websites, such as state health departments or EPA and news articles. There are no contaminated sites reported to be located in Kentucky. There are sites located in Cass County and Miami County, Indiana as well as Dayton and Little Hocking, Ohio. Tennessee has a site located in Millington. West Virginia has two sites, one in Parkersburg and another in Martinsburg. EPA estimates water supplies for 110 million Americans are also potentially contaminated by PFAS. <https://www.epa.gov/pfas>

Mercury Reporting Assistance

EPA has released a tool intended to help companies, organizations and individuals fulfill their reporting requirements under the mercury reporting requirements rule. The rule was finalized on June 27, 2018. Those affected can report online through the Mercury Electronic Reporting (MER) application accessed through EPA's Central Data Exchange. The information collected through the new reporting requirements will be used to develop future inventories of mercury supply, use, and trade in the United States. Based on the inventory of information collected, the Agency will identify any manufacturing processes or products that intentionally add mercury and recommend actions to achieve further reductions in mercury use. The deadline for reporting [mercury activities](#) that occurred in the 2018 calendar year is July 1, 2019 and every three years thereafter.

SO₂ Update

Based on EPA review of air quality criteria that addresses the human health effects and the primary national ambient air quality standard for sulfur oxides (SO_x) the EPA is retaining the current standard without revision. The final action on this issue is effective on April 17, 2019.

EPA Air Plan Approval Jefferson County, KY

EPA is proposing to approve changes to the Jefferson County portion of the KY SIP. The revision makes minor ministerial amendments to regulations regarding new and existing process operations. Comments must be received on or before April 3, 2019.

Municipal Solid Waste Landfills-Advances in Liquids Management Extension of Comment Period

EPA issued an advance notice in the Federal Register on December 26, 2018 and asked for comments on potential revisions to the criteria for municipal solid waste landfills and associated issues related to advances in liquids management. The comment period has been extended for 45 days from March 26, 2019 to May 10, 2019.

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National Emission Standards for HAPs: 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.

EPA has taken final action on the residual risk and technology reviews and emissions during periods of startup, shutdown and malfunction; electronic reporting for performance test results and compliance reports; the addition of EPA method 18 and updates to several measurement methods; and the addition of requirements for periodic performance testing for the industries listed in the heading above. This final rule is effective on March 15, 2019.

Plastic Bag Bans

Banning plastic bags is in vogue, so watch your community. It will surely get on the banned bag bandwagon. Most of the emphasis is being placed in the single-use checkout plastic bags with handles. Some laws require the retailers to charge a fee for bags provided and many require signs to be posted at checkout location. There are some exemptions. For example, newspaper bags, bags used to wrap produce, frozen food, meat or fish seem to be OK in most communities but check the list for your city. Laundry and dry cleaner, and trash can liners are exempt in many jurisdictions. One jurisdiction requires retail establishments to offer customers a paper bag made of at least 40% post-consumer recycled material that can be composted for a fee of 10-25 cents. Pet waste bags have been allowed in only two cities where information was available. Side note - I saw a chicken being fitted for a pink walking collar and a leash in a pet store last weekend. Bag bans, walking chickens, I'm beginning to see where our world is heading.

Green New Deal

I provided background on this issue in the February [RegWatch](#). As has been widely reported, the [Green New Deal](#), a sweeping proposal for dealing with climate change, fell at the first hurdle Tuesday as the [Senate failed to reach the 60 votes necessary](#) to begin debate on the non-binding resolution, with 42 Democrats and Sen. Bernie Sanders, I-Vt., voting "present." No senator voted to begin debate on the legislation, while 57 lawmakers voted against breaking the filibuster. Democratic Sens. Doug Jones of Alabama, Joe Manchin of West Virginia and Kyrsten Sinema of Arizona joined 53 Republicans in voting "no." Sen. Angus King, I-Maine, who caucuses with the Democrats, also voted "no." The vote had been teed up by Senate Majority Leader Mitch McConnell, R-Ky., in a bid to make Democratic senators -- including several 2020 presidential candidates -- go on the record about the measure."

Golf Course Water Hazards

During my days growing up, many of my friends would sneak onto local golf courses and dive for golf balls in ponds found at the courses. Balls deposited in fresh water ponds seem to be OK in this era of extreme environmentalism but what about ocean courses? Gerald George reports that a diver and student at a California college removed almost 30,000 golf balls from Stillwater Cove at Pebble Beach between 2016 and 2018. The balls

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apparently disintegrate in the surf, contributing microplastic and chemicals into the ocean waters. The student estimated that 1 to 5 million balls had been lost since the course opened in 1919. The Pebble Beach Company has made a 5-year commitment to undertake 198 annual dives to collect golf balls at 11 sites around the course. How many other courses will feel obliged to follow Pebble Beach down this unfathomable road? Just remember to watch for alligators in the fresh water ponds located in the southeast.

KY Administrative Register

Nothing relating to environmental or safety issues is in the April 1, 2019 KY Administrative Register. Looks like the legislature was keeping them busy.

Dates To Remember

- Effective date, National Emission Standards for Hazardous air Pollutants; Surface Coating of Large Appliances; Printing, Coating and Dying of Fabrics and Other Textiles and Surface Coating of Metal Furniture Residual Risk and Technology Reviews. March 15, 2019;
- Changes to Jefferson County SIP comment period closes April 3, 2019;
- Waters of The US public comment period closes April 15, 2019;
- Municipal Solid Waste Landfill Liquids Management comment period closes May 10, 2019
- Mercury accountability reporting deadline July 1, 2019;
- Pharmaceutical Rule effective date August 21, 2019.

Air Plan Approval; Kentucky: Jefferson County Process Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve changes to the Jefferson County portion of the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet), through a letter dated March 15, 2018. The proposed SIP revision was submitted by the

Cabinet on behalf of the Louisville Metro Air Pollution Control District (District) and makes minor ministerial amendments to regulations regarding new and existing process operations. DATES: Comments must be received on or before April 3, 2019.

<https://www.govinfo.gov/content/pkg/FR-2019-03-04/pdf/2019-03851.pdf>

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Revisions to the Criteria for Municipal Solid Waste Landfills to Address Advances in Liquids Management

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: The Environmental Protection Agency (EPA) is considering whether to propose revisions to the criteria for Municipal Solid Waste Landfills (MSWLFs) to support advances in effective liquids management. To this end, EPA is seeking information relating to: Removing the prohibition on the addition of bulk liquids to MSWLFs; defining a particular class of MSWLF units (i.e., bioreactor landfill units) to operate with increased moisture content; and establishing revised MSWLF criteria to address additional technical considerations associated with liquids management, including waste stability, subsurface reactions, and other important safety and operational issues. This Advance Notice of Proposed Rulemaking (ANPRM) also discusses the results of related research conducted to date, describes EPA's preliminary analysis of that research, and seeks additional scientific studies, data, and public input on issues that may inform a future proposed rule. The EPA is not reopening any existing regulations through this ANPRM.

DATES: Comments must be received on or before March 26, 2019. If necessary, EPA may convene a public meeting to collect more information on this issue after the close of the public comment period. The EPA would provide notice and details of such a meeting on its website.

<https://www.govinfo.gov/content/pkg/FR-2018-12-26/pdf/2018-27748.pdf>

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