



SMG Regulatory Update

April 2019/ Scott R. Smith

Our Regulatory Update 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 or Karen Thompson, karent@smithmanage.com

Scott's Thoughts

KY Set to Revisit Water Quality Standards

After gathering comments about a year ago, KDOW is set to file their Water Quality Standards. Informal versions of the rule have been provided to stakeholders for comment. Perhaps one of the most contentious provisions in the proposed rule in 2018 was the adoption of the 2015 EPA Human Health Criteria for 94 pollutants modified for Inland South Fish Consumption Rates. While a workgroup was promised last fall, it appears that it may be formed and begin work later this year, so adoption of EPA's HHC will be postponed until later in 2019 which is a good thing. Other areas that comments were filed and will be interesting to see if/how KDOW addresses include mixing zones; criteria used to address Outstanding Resource Waters and endangered species. Under the current plan there will be 29 new Outstanding and Exceptional Water designations. One question will be how KDOW responds to comments regarding constituents' numerical standards that are below drinking water standards and those that cannot be measured with current analytical methods. Stay tuned.

KY Thinking About Changing Cleanup Requirements

A rewrite of 401 KAR 100:030 is being considered by KDWM. It is currently a work in progress. The rewrite is trying to address several broad issues such as groundwater remediation, coal refuse cleanups and other things with one regulation. Keep your eyes open and pencils sharp for this proposal, it could be published for comment soon.

New Wrinkle-EPA Composite Wood Product Labeling Requirements

Certain particle board, manufactured flooring and paneling contain formaldehyde a product identified by the country of California (CARB) and EPA as potentially causing cancer, birth defects and other maladies. Effective March 22, 2019, EPA implemented regulations relating to labeling requirements under Section VI of TSCA-The Formaldehyde Standards for Composite Wood Products Act. *Regulated products manufactured in or imported*

into the United States after March 22, 2019 may not rely on the CARB reciprocity of 40 CFR 770.15(e) and must be certified and labeled as TSCA Title VI compliant.

<https://www.epa.gov/formaldehyde/formaldehyde-emission-standards-composite-wood-products>

New Owner Audit Program Agreement for Oil & Gas Exploration and Production Facilities

New owners of oil and gas facilities may be particularly well positioned to identify and address emission violations. This program offers new owner's incentives to ensure their newly-acquired facilities are in, or come into, compliance. This audit program is available to new owners of upstream oil and natural gas exploration and production facilities (i.e., well sites, including associated storage tanks and pollution control equipment). The program encourages new owners of these facilities to participate because it provides regulatory certainty and clearly contains well defined civil penalty mitigation beyond what is offered by the EPA's existing self-disclosure policies. The new program differs from the Obama era program in the following ways: The policy provides full civil penalty mitigation for all violations corrected and discovered through the audit; the audit agreement template streamlines the audit process reducing transaction costs and allowing for more efficient disclosure of noncompliance through semi-annual reports; once the agreement is finalized, it is fully transferrable to any subsequent owner.

<https://www.epa.gov/enforcement/new-owner-clean-air-act-audit-program-oil-and-natural-gas-exploration-and-production>

Ignitability Characteristic Requirement Proposed To Be Modified

EPA is proposing numerous changes to the ignitability characteristic standard under RCRA. EPA is doing a soft sell on the proposed regulation however; you need to review it carefully to see how it might impact your facility. In addition to comments on the proposal, EPA also is requesting comments on whether other changes to the characteristic rule are necessary. This could be a problem if these comments are incorporated into the final rule without public review and comment. According to the law firm Beveridge & Diamond, there are two aspects of the proposal that appear to be more substantive and could potentially expand the universe of RCRA hazardous wastes. This would include proposed changes for the exclusion for aqueous liquids with less than 24% alcohol and a provision relating to the status of "multiphase mixtures" (wastes consisting of solids and liquids and/or more than two immiscible liquids).

Comments must be received by June 3, 2019. <https://www.epa.gov/hw-sw846/proposed-rule-modernizing-ignitable-liquids-determinations>

<https://www.bdlaw.com/publications/epa-proposal-to-modernize-the-rcra-ignitability-characteristic-may-cause-more-wastes-to-be-classified-as-hazardous/>

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Changes to Chemical Data Reporting Rule Proposed by EPA

EPA is proposing to amend the Chemical Data Reporting (CDR) rule. The rule requires manufacturers (including importers) of chemical substances listed on the TSCA Chemical Substance Inventory to report data on chemical manufacturing, processing and use every four years. The proposed rule contains new provisions governing claims of “confidential business information” as well as an update to the definition of small entities (small manufacturers) that are exempt from reporting; add exemptions for specific types of byproducts; simplify reporting, including allowing manufacturers to use certain processing and use data codes already in use as part of international codes developed through the Organization for Economic Cooperation and Development and remove outdated rule text and consolidate exemptions.

www.epa.gov/chemical-data-reporting/legislative-and-regulatory-authority-chemical-data-reporting#revision

EPA Bans Certain Uses of Asbestos

EPA has issued a final Significant New Use Rule prohibiting over a dozen uses of asbestos from returning to the marketplace without EPA review and approval. Some of the uses mentioned include adhesives, sealants and roof and non-roof coatings; cement products, packings, pipeline wrap, reinforced plastics, roofing felt, etc. The following “ongoing uses of asbestos” are subject to EPA’s risk evaluation and approval-imported raw bulk chrysotile asbestos for the fabrication of diaphragms (used in chlorine and sodium hydroxide production); sheet gaskets (used in chemical production, e.g. titanium dioxide production); brake blocks used in oil drilling equipment; aftermarket automotive brakes/linings and other vehicle friction products and other gaskets.

<https://www.epa.gov/asbestos/epa-actions-protect-public-exposure-asbestos>

President Trump Aims to Streamline Clean Water Act Permitting

On April 10 President Trump issued a pair of Executive Orders aimed at streamlining Clean Water Act permitting. The most important CWA programs impacted by Section 401 are the Section 402 NPDES and Section 404 dredge and fill programs. The order requires EPA to conduct a comprehensive review of the Section 401 program. The first step will be the review of the existing interim guidance from 2010 and issue new guidance within 60 days. The review will focus on federal-state cooperation, types of conditions appropriate to include in a certification and the scope and timing of certifications. Once guidance is finalized, EPA is required to propose new regulations implementing Section 401 of the Clean Water Act that will be finalized no later than next year.

EPA Releases Interpretive Statement on Releases of Pollutants from a Point Source to Groundwater

On April 23, EPA issued an Interpretative Statement addressing whether the Clean Water Act National Pollutant Discharge Elimination System permit program applies to releases of a pollutant from a point source to groundwater. The Agency concludes that the CWA excludes all releases of pollutants from a point source to

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groundwater from NPDES program coverage regardless of a hydrologic connection between the groundwater and jurisdictional surface water.

<https://www.epa.gov/npdes/releases-point-source-groundwater>

Dates To Remember

- April 16, 2018, Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Incineration Unit; Technical Amendments, effective date;
- May 10, 2019, Municipal Solid Waste Landfill Liquids Management comment period closes;
- May 10, 2019, Air Plan Approval; Kentucky: Jefferson County Prevention of Significant Deterioration, effective date;
- June 3, 2019, Modernizing Ignitable Liquids Determinations, comment period closes;
- June 7, 2019, Interpretive Statement of CWA's NPDES program Release of Pollutants to Groundwater, comment period closes;
- July 1, 2019, Mercury accountability reporting deadline;
- July 29, 2019, Updates to NPDES e-Rule Data Elements to Reflect MS4 General Permit Remand Rule, comment period closes;
- Pharmaceutical Rule effective August 21, 2018

Modernizing Ignitable Liquids Determinations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is proposing to update the regulations for the identification of ignitable hazardous waste under the Resource Conservation VerDate Sep2014 17:52 Apr 01, 2019 Jkt 247001 PO 00000 Frm 00013 Fmt 4702 Sfmt 4702 E:\FR\FM\02APP1.SGM 02APP1 amozie on DSK9F9SC42PROD with PROPOSALS 12540 Federal Register / Vol. 84, No. 63 / Tuesday, April 2, 2019 / Proposed Rules and Recovery Act (RCRA) and to modernize the RCRA test methods that currently require the

use of mercury thermometers. These proposed revisions would provide greater clarity to hazardous waste identification, provide flexibility in testing requirements, improve environmental compliance, and, thereby, enhance protection of human health and the environment.

DATES: Comments must be received on or before June 3, 2019.

<https://www.govinfo.gov/content/pkg/FR-2019-04-02/pdf/2019-05878.pdf>

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Interpretive Statement on Application of the Clean Water Act National Pollutant Discharge Elimination System Program to Releases of Pollutants from a Point Source to Groundwater

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of interpretive statement and request for comment.

SUMMARY: The Environmental Protection Agency (“EPA”) is issuing an Interpretive Statement addressing whether the Clean Water Act (“the CWA” or “the Act”) National Pollutant Discharge Elimination System (“NPDES”) permit program applies to releases of a pollutant from a point source to groundwater. This Interpretive Statement reflects the EPA’s consideration of the public comments received in response to its February 20, 2018 Federal Register notice, as summarized immediately below. Informed by those comments and based on a holistic analysis of the statute, its text, structure, and legislative history, the Agency concludes that the CWA is best read as excluding all releases of pollutants from a point source to groundwater from NPDES program coverage, regardless of a hydrologic connection between the groundwater and jurisdictional surface water. The Interpretive Statement provides the EPA’s full analysis and rationale supporting its interpretation and is available below and at <https://www.epa.gov/npdes/releases-pointsource-groundwater>. Concurrently with issuing its interpretation of the CWA, the Agency is soliciting additional public input regarding what may be needed to provide further clarity and regulatory certainty on this issue.

DATES: Comments must be received or postmarked on or before June 7, 2019.

<https://www.govinfo.gov/content/pkg/FR-2019-04-23/pdf/2019-08063.pdf>

Updates to NPDES eRule Data Elements to Reflect MS4 General Permit Remand Rule

AGENCY: Environmental Protection Agency (EPA)

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to update specific data elements within the National Pollutant Discharge Elimination System (NPDES) Electronic Reporting Rule (NPDES eRule) published on October 22, 2015 (80 FR 64064), that apply to regulated municipal separate storm sewer systems (MS4s). These changes are necessary given the promulgation of a separate rulemaking after publication of the NPDES eRule that modified the NPDES permit requirements for small MS4s. That rule, referred to as the MS4 General Permit Remand Rule, published on December 9, 2016 (81 FR 89320), made a number of the MS4-related data elements in the NPDES eRule no longer accurate. This proposed rule updates those data elements to be consistent with the current MS4 regulations, corrects related typographical errors, and makes other selected clarifications at the request of state NPDES permitting programs.

DATES: Comments must be received on or before July 29, 2019.

<https://www.govinfo.gov/content/pkg/FR-2019-04-30/pdf/2019-08733.pdf>

Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

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SUMMARY: Following requests for clarification of its June 2016 final action, the Environmental Protection Agency (EPA) published proposed amendments to several provisions of the 2016 New Source Performance Standards (NSPS) and Emission Guidelines (EG) for Commercial and Industrial Solid Waste Incineration (CISWI). This action finalizes the proposed amendments, which provide clarity and address implementation issues in the final CISWI NSPS and EG, as well as correcting inconsistencies and errors in these provisions.

DATES: This final rule is effective on April 16, 2019. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of February 7, 2013.

<https://www.govinfo.gov/content/pkg/FR-2019-04-16/pdf/2019-05529.pdf>

Air Plan Approval; Kentucky: Jefferson County Prevention of Significant Deterioration AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action to approve two revisions 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), with letters dated August 25, 2017 and March 15, 2018. The SIP revisions were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (District) and make amendments to Jefferson County's regulation regarding the prevention of significant deterioration (PSD) permitting program. This action is being taken pursuant to the Clean Air Act (CAA or Act).

DATES: This rule is effective May 10, 2019

Planning for Natural Disaster Debris Guidance

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

SUMMARY: The U.S. Environmental Protection Agency (EPA) is announcing the availability of a final guidance entitled, Planning for Natural Disaster Debris. The Planning for Natural Disaster Debris guidance is intended to assist communities in planning for debris management before a natural disaster occurs (also referred to as "preincident debris management planning"). This guidance revises EPA's existing guidance document on planning for natural disaster debris that was published in 2008 under the same name. Pre-incident planning can significantly aid decision-making during a response and enhance a community's resiliency. Pre-incident planning can help communities recover faster, spend less money on cleanup and debris/waste management, and use fewer resources to rebuild and recover.

DATES: The announcement of the guidance is published in the Federal Register on April 24, 2019

<https://www.epa.gov/homeland-security-waste/guidance-about-planning-natural-disaster-debris>

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