



SMG Regulatory Update

May 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

Heads up General Permit Holders

Several of Kentucky's General Water Permits are set to expire this year or early in 2020. Now is the time to get involved in the development of the permits to make sure you are not going to be saddled with requirements that are more stringent than the federal permit or regulations. Here are the permits and **expiration dates** for 2019 and early 2020: Stormwater Construction 11/30/19; General Aviation Airports 8/31/19; Construction Material Manufacturing Operations (concrete & asphalt) 1/31/20; Noncoal mining 1/31/20.

EPA Modifies General Permit for Stormwater Discharges from Construction Activities

Speaking of General Permits, on May 28, EPA issued a Notice of final permit modification for the General Permit for stormwater discharges from construction activities. The modification will become effective on June 27, 2019. Here are brief descriptions of three changes contained in the Permit Modification. Removed examples in the definition of "operator" so that entities determining if they should seek permit coverage can focus on the substantive definition of operator; EPA adjusted the working of two erosion and sediment control requirements and one pollution prevention requirement in the permit to clarify their intent and to align their text with the C&D ELG at 40 CFR part 450 and EPA clarified an individual operator's legal responsibility for permit compliance in situations where there are multiple operators who divide permit responsibilities among themselves. EPA removed references to "joint and several liability" from the original permit.

Startup, Shutdown, Malfunction-Help May Be on The Way

In 2015, EPA published a final regulatory action under the Clean Air Act requiring 36 states to remove provisions from their SIPs) that allowed exemptions from emissions limitations during startup, shutdown and malfunctions events. This action also required 17 states to remove affirmative defenses from the SSM provisions of their SIPs. Is help on the way? On April 29, 2019 Federal Register, EPA published a proposal to rescind a finding that the Texas SIP is inadequate due to its affirmative defense provisions. These provisions allow a defense to an

enforcement action for excess air emissions that result from “upset” defense events. It would appear that while this would only apply to Texas, the implication is that other states could also develop approvable state SIPs that include startup/shutdown, malfunction and upset defenses for state standards.

EPA Wants to Improve Communication with the States in Civil Enforcement & Compliance Work

EPA is soliciting public comments on its policy of *Enhancing Planning and Communication Between the EPA and States in Civil Enforcement and Compliance Assurance Work*. <https://www.epa.gov/sites/production/files/2019-04/documents/guidance-enhancingregionalstatecommunicationoncompliance-190422.pdf> The Agency intends to replace an Interim Guidance and would set out expectations and procedures for enhancing planning and communication on civil enforcement work between the EPA and States that are implementing Federal Environmental programs. The draft includes the following proposed principles and actions: Joint EPA/State Planning; Inspection Planning; Enforcement Planning and Elevating an issue. Finally, the draft emphasizes that the EPA will defer to states that conduct inspections and enforcement under federal programs the states are delegated to implement. But there are exceptions. For example, the EPA is expected to take the lead when states request that the Agency do so; when there are violations of a [National Compliance Initiative](#); when there are public health and environmental emergencies; or when the state lacks the equipment, resources, or expertise to take the lead.

EPA Spring Regulatory Agenda

The Agenda reports on actions administrative agencies plan to issue in the near and long term and can be found at <https://www.reginfo.gov/public/do/eAgendaMain>. One of the proposed rules we have been following has been, Strengthening Transparency of Regulatory Science. According to the Agenda, the Final Rule will be published in December 2019. Another rule EPA is considering is the Clean Air Act Benefit/Cost Reforms. The changes being considered will improve consistency, reliability and transparency of the Agency’s treatment of Clean Air Act provisions related to costs and benefits. EPA expects to issue a Notice of Proposed Rulemaking by December 2019.

EPA Issues Draft Interim Recommendations for Addressing Groundwater Contaminated with PFOA PFOS

EPA is seeking public comment on a draft set of recommendations for cleaning up groundwater contaminated with PFOA and PFOS. The guidance provides the following recommendations: Screening levels, which are used to determine if levels of contamination may warrant further investigation; preliminary remediations goals are included in the proposed recommendations. <https://www.epa.gov/pfas/draft-interim-recommendations-addressing-groundwater-contaminated-pfoa-and-pfos>

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EPA proposes Emission Standards for Hazardous Air Pollutants for Boat Manufactures and Reinforced Plastic Composites Production

The Agency is proposing no revisions to the numerical emission limits or other aspects of the rules based on their analysis. EPA is however proposing to amend provisions addressing emissions during periods of start-up, shutdown and malfunction and to amend provisions regarding electronic reporting of certain notifications, performance test results, and semiannual reports. Based on NAICS codes listed as affected by this proposed action, Kentucky has many facilities that are associated with the proposal. KY Boat Manufacturers, NAICS code 336612. Facilities that perform fiberglass production operations or aluminum coating operations 7 are found in Kentucky. Reinforced plastic Composites Productions, NAICS codes 326113-339991. There are 50+ facilities that manufacture intermediate and/or final products using styrene containing thermoset resins and gel coats in the Commonwealth.

Asphalt Processing and Asphalt Roofing Manufacturing Covered Under EPA Proposed Air Rule

The proposed action presents the results of the residual risk and technology review. EPA is also proposing amendments to correct and clarify regulatory provisions related to emissions during periods of startup, shutdown and malfunction; add requirements for periodic performance testing; add electronic reporting of performance test results and reports, performance evaluation reports, compliance reports and Notification of Compliance Status reports, revise monitoring requirements for control devices used to comply with PM standards and include other technical corrections to improve consistency and clarity. Based on NAICS codes listed as affected by this proposed action, Kentucky has a few facilities that could be impacted by this proposal according to Kentucky Directory of Manufacturers (June 7, 2018). Asphalt processing and asphalt roofing manufacturing, NAICS code 324110 (2 facilities) and Asphalt processing and asphalt roofing manufacturing 324122 (2 facilities) are listed as industrial source categories affected by this proposed action.

3 Air Quality Rules Impacting Louisville and Kentucky Are Listed in May Federal Registers

- EPA proposed May 16, to approve Kentucky's SIP regarding the CAA good neighbor interstate transport (prongs 1 and 2) infrastructure SIP requirements from the 2010 1 hour Nitrogen Dioxide NAAQS. Comments must be received on or before June 17, 2019.
- On May 20, EPA proposed to approve Kentucky's SIP regarding definitions and the federally enforceable Louisville Air District's origin operating permit (FEDOOP) program. The SIP revisions were submitted by the Cabinet on behalf of Louisville Metro Air Pollution Control District. Comments must be received or before June 19, 2019.
- A final rule published on May 21 covers a SIP revision submitted by KY's Environmental Cabinet on behalf of the Louisville Metro Air Pollution Control District. Minor amendments have been made to the regulations regarding new and existing process operations. The rule will become effective June 20, 2019.

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KY Regulatory Changes-Status

Proposed Amendments to Regulations Department for Environmental Protection Water Quality

401 KAR 005:010. Operation of wastewater systems by certified operators-

<https://apps.legislature.ky.gov/law/kar/401/005/010reg.pdf>

401 KAR 008:030. Water treatment plant and water distribution system classification and staffing-

<https://apps.legislature.ky.gov/law/kar/401/008/030reg.pdf>

401 KAR 008:050. Drinking water program fees

<https://apps.legislature.ky.gov/law/kar/401/008/050reg.pdf>

401 KAR 011:001. Definitions for 401 KAR Chapter 011 (Certified Operators)

<https://apps.legislature.ky.gov/law/kar/401/011/001reg.pdf>

401 KAR 011:030 Wastewater treatment and collection system operators; classification and qualifications

<https://apps.legislature.ky.gov/law/kar/401/011/030reg.pdf>

401 KAR 011:040 Water treatment and distribution system operators; classification

<https://apps.legislature.ky.gov/law/kar/401/011/040reg.pdf>

401 KAR 011:060 Operator and training provider certification fees

<https://apps.legislature.ky.gov/law/kar/401/011/060reg.pdf>

Proposed Amendments to Regulations Department for Natural Resources: Mining Safety Standards

805 KAR 003:110. Employees' personal protection

<https://apps.legislature.ky.gov/law/kar/805/003/110reg.pdf>

Dates to Remember

- 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;
- June 12, 2019, Enforcement & Compliance: Enhancing EPA-State Planning and Communication, comment period closes
- June 17, 2019, National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing Residual Risk and Technology Review, comment period closes;
- June 17, 2019, Air Plan Approval; Kentucky; Interstate Transport (Prongs 1 and 2) for the 2010 1-hour NO2 Standard, Comments are due;
- June 19, 2019, Air Plan Approval; Kentucky: Jefferson County Definitions and Federally Enforceable District Origin Operating Permits, comments due;
- June 20, 2019, Air Plan Approval; Kentucky: Jefferson County Process Operations, rule becomes effective;

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- June 27, 2019, Final Modification to NPDES General Permit for Stormwater Discharges from Construction Activities, Modified 2017 CGP will become effective;
- July 1, 2019, National Emission Standards for Hazardous Air Pollutants: Boat Manufacturing and Reinforced Plastic Composites Production Residual Risk and Technology Review, 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, 2019

National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP): Asphalt Processing and Asphalt Roofing Manufacturing. The proposed action presents the results of the residual risk and technology review (RTR) conducted as required under the Clean Air Act (CAA). The EPA is also proposing amendments to correct and clarify regulatory provisions related to emissions during periods of startup, shutdown, and malfunction; add requirements for periodic performance testing; add electronic reporting of performance test results and reports, performance evaluation reports, compliance reports, and Notification of Compliance Status reports; revise monitoring requirements for control devices used to comply with the particulate matter (PM) standards; and include other technical corrections to improve consistency and clarity. Although the proposed amendments are not anticipated to result in reductions in emissions of hazardous air

pollutants (HAP), if finalized, they would result in improved compliance and implementation of the rule.

DATES: Comments. Comments must be received on or before June 17, 2019. 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 3, 2019.

<https://www.govinfo.gov/content/pkg/FR-2019-05-02/pdf/2019-08155.pdf>

National Emission Standards for Hazardous Air Pollutants: Boat Manufacturing and Reinforced Plastic Composites Production Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing amendments to the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Boat Manufacturing and the NESHAP for Reinforced Plastic Composites Production. The proposed amendments address the results of the residual risk and technology review (RTR) conducted as required under the Clean Air Act (CAA) for these

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source categories. The 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. We are proposing no revisions to the numerical emission limits or other aspects of the rules based on these risk analyses or technology reviews. Additionally, the EPA is proposing to amend provisions addressing emissions during periods of startup, shutdown, and malfunction (SSM) and to amend provisions regarding electronic reporting of certain notifications, performance test results, and semiannual reports.

DATES: Comments. Comments must be received on or before July 1, 2019. 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 17, 2019.

<https://www.govinfo.gov/content/pkg/FR-2019-05-17/pdf/2019-09583.pdf>

Final Modification to National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges from Construction Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final permit modification.

SUMMARY: All ten of the Environmental Protection Agency (EPA) Regions today are issuing a final modification to the 2017 National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges from construction activities, also referred to as the “2017 Construction General Permit (CGP)” or “2017 CGP,” which became effective on February 16, 2017. The modified permit, hereinafter known as the “modified 2017 CGP”

or “final modified permit,” replaces several conditions in the original 2017 CGP and relevant fact sheet sections. The scope of the modification is limited to only these conditions; all other conditions remain the same. The permit term also remains the same, meaning the modified 2017 CGP will still expire on February 16, 2022. This Federal Register notice describes the final permit modification and changes that were made from the proposed modified permit to the final modified permit based on public comments. The modified 2017 CGP and accompanying fact sheet can be found in the Docket (EPA-HQ-OW-2015-0828) as well as on the EPA’s construction stormwater website at

<https://www.epa.gov/npdes/stormwaterdischarges-construction-activities>.

DATES: The modified 2017 CGP will become effective on June 27, 2019. In accordance with 40 CFR part 23, specifically 23.2, this modified permit shall be considered issued for the purpose of judicial review on May 28, 2019.

<https://www.govinfo.gov/content/pkg/FR-2019-05-28/pdf/2019-11075.pdf>

Air Plan Approval; Kentucky; Interstate Transport (Prongs 1 and 2) for the 2010 1-Hour NO₂ Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Kentucky, through the Kentucky Energy and Environment Cabinet by a letter dated November 16, 2018, for the purpose of addressing the Clean Air Act (CAA or Act) “good neighbor” interstate transport (prongs 1 and 2) infrastructure SIP requirements for the 2010 1-hour Nitrogen Dioxide (NO₂) National Ambient Air Quality

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Standard (NAAQS). The CAA requires that each state adopt and submit a SIP for the implementation, maintenance, and enforcement of each NAAQS promulgated by EPA, commonly referred to as an “infrastructure SIP.” Specifically, EPA is proposing to approve Kentucky’s November 16, 2018, SIP revision addressing prongs 1 and 2 to ensure that air emissions in Kentucky do not significantly contribute to nonattainment or interfere with maintenance of the 2010 1-hour NO₂ NAAQS in any other state.

DATES: Comments must be received on or before June 17, 2019.

<https://www.govinfo.gov/content/pkg/FR-2019-05-16/pdf/2019-10184.pdf>

Air Plan Approval; Kentucky: Jefferson County Definitions and Federally Enforceable District Origin Operating Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve State Implementation Plan (SIP) revisions submitted under cover letters dated December 21, 2016, and August 25, 2017, by the Commonwealth of Kentucky, through the Energy and Environment Cabinet (Cabinet). The proposed SIP revisions were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (LMAPCD or District) and make amendments to Jefferson County’s regulations regarding definitions and the federally enforceable district origin operating permit (FEDDOOP) program. EPA is proposing to approve the revisions modifying these regulations pursuant to the Clean Air Act (CAA or Act).

DATES: Comments must be received on or before June 19, 2019.

<https://www.govinfo.gov/content/pkg/FR-2019-05-20/pdf/2019-10344.pdf>

Air Plan Approval; Kentucky: Jefferson County Process Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is taking final action 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), by way of a letter dated March 15, 2018. The 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: This rule will be effective June 20, 2019.

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