



## SMG Regulatory Update

July 2019/ Scott R. Smith and Jami Arnold

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](mailto:scottr.smith@smithmanage.com) or Karen Thompson, [karent@smithmanage.com](mailto:karent@smithmanage.com)

### *Updates*

#### **New Look This Month**

We are expanding our content with this addition to include more information on state and federal OSHA. I would appreciate any feedback on this idea. Jami Arnold one of our safety/industrial hygienists, will be providing this information. If you have suggestions, questions or comments, she can be reached at [jamia@smithmanage.com](mailto:jamia@smithmanage.com).

#### **Renewable Energy Concerns-Raw Materials and Disposal Issues**

Something I hadn't thought about when it comes to implementing the frenzy surrounding renewable energy is how much material it takes to build wind turbines and raw materials necessary for the manufacture of solar panels. Also, the amount of waste generated when the useful life of these products comes to an end. Mark P. Mills recently authored an editorial for the Wall Street Journal entitled, *If You Want "Renewable Energy", Get Ready to Dig*. In his article he points out that, "wind and solar machines and batteries are built from nonrenewable materials. And they wear out." Here are some interesting thoughts from his paper. The International Renewable Energy Agency calculates that solar goals for 2050 consistent with the Paris Accords will result in old solar panel disposal that will more than double the tonnage of all of today's global plastic waste. A single electric car battery weighs about 1,000 pounds. Fabricating one requires digging up, moving and processing more than 500,000 pounds of raw materials. Building one wind turbine requires 900 tons of steel, 2500 tons of concrete and 45 tons of nonrecyclable plastic. Global silver and indium mining will jump 250% and 1,200% respectively over the next couple of decades to provide the materials necessary to build the number of solar panels the International Energy Agency forecasts. It's an interesting piece. Look for this article when you get a chance.

### States Role in Federal Environmental Enforcement Clarified

EPA has issued its final policy on [Enhancing Effective Partnerships Between the EPA and States](#) in Civil Enforcement and Compliance Assurance Work on July 11, 2019. EPA will defer to the state as the primary implementer of inspections and enforcement.

### Federal Agencies Receive Draft Guidance on How to Evaluate Greenhouse Gas Emissions

On June 26, 2019 The Council on Environmental Quality (CEQ) published new [draft guidance](#) to clarify the scope of review federal agencies should undertake when considering the effects of greenhouse gas emissions under NEPA. The Draft Guidance encourages the quantification of potential GHG emissions, it defers to the agency as to whether and when quantification is practicable. The document states that agencies are not required to employ the Social Cost of Carbon tool or similar methodologies to evaluate GHG emissions and affirms the appropriateness of monetizing some but not all of a project's effects.

### EPA Air Regulations

Kentucky hit a trifecta with EPA in July scoring 3 entries in the Federal Register that address air issues. Two of the three pertained to Jefferson County. See federal register items below. EPA also proposed amendments to the NESHAP Municipal Solid Waste (MSW) Landfills source category.

This month's Federal Register also published a Mega Rule for Repeal of Clean Power Plan; Finalizing the Affordable Clean Energy Rule (ACE) and Finalizing New Regulations for State Implementation of ACE and Future Emission Guidelines with an effective date of September 6, 2019.

### Pharma Rule Effective August 21, 2019

EPA has adopted a final rule that imposes new standards for the [management of hazardous waste pharmaceuticals](#) (HWPs) that goes into effect on August 21, 2019. This rule is meant to clarify and provide a consistent approach to the management of HWPs. Many of the rule's important provisions must first be adopted at the state level within the next two to three years. Potentially, this could give rise to inconsistencies between states. You will need look for the requirements from state to state to ensure compliance. Some of the important provisions of the rule include that disposal into sewers of the HWPs will be banned. Finally, the new rule introduces new waste handling rules and regulations for HWPs processed through reverse distribution. The final rule governs a broad range of health care facilities including wholesalers, third party logistics providers, hospitals, long term care facilities, pharmacies, veterinary clinics and hospitals.

### What's Up with KY OSH?

Not sure if you are aware of what's been going on at KY OSH so here's an update. Lots of rumors, so here's some updated information. Federal OSHA received multiple complaints regarding KY OSH fatality investigations prior to

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2017. They reviewed the complaints and looked at the overall program. OSHA included their remarks in the annual assessment titled the Federal Annual Monitoring Evaluation (FAME) Report. This report reviewed the State Plan's progress in achieving performance goals. The [FAME FY 2017](#) revealed deficiencies in both Divisions of KY OSH – Compliance and Education/Training. The main areas the Feds identified as deficient were the methods KY used to conduct fatality investigations, inadequate training and staffing, lack or insufficient documentation, reduction in planned inspections, and no action taken on complaints alleging unsafe or unhealthful work conditions. Since then, KY OSH has been under media scrutiny, policy changes, and significant turnover. In response, Governor Bevin appointed new leadership, re-organized KY OSH, and abolished the OSH Standards Board by executive order, transferring all power to promulgate regulations to the Labor Secretary which is not unlike other cabinets. Some of the changes were noted in the follow-up [FAME FY 2018](#) which was more favorable than the FY 2017 report. The updated report credited KY OSH for implementing corrective actions and being responsive to the findings and recommendations outlined in the FY 2017 report. This positive change was attributed to Governor Bevin's newly appointed leadership team in the Department of Workplace Standards and both Divisions of KY OSH.

#### **Heads Up Kentucky Employers –Top Fatal Industries**

Since the latest optimistic FAME, the Kentucky Labor Cabinet published current fatality rates thus far for FY 2019. Unfortunately, this year has proven to have an unusually high number of workplace fatalities. Despite a declining trend in worker fatalities over the past few years, the [forecast for 2019 is shaping up to set a record high](#) if the current pace continues. Stay tuned to see if these issues and the inevitable political tug-of-war over the OSH Standards Board impact our State Plan.

If your business falls into one of the top industries (construction, manufacturing, landscaping) you can bet, KY OSH will be looking closely at your operations. Regardless of the type of business you own or manage, it's important to dust off those OSHA written programs and if you don't have any, find a professional to help you.

#### **Supreme Court Limits Deference Owed to Agency Interpretations of Regulations**

The Supreme Court rendered a decision regarding its deference to federal agencies interpretation of their rules in [Kisor v. Wilkie](#). The decision does not preclude courts from deferring to the Agencies, but the Court narrowed the circumstances in which *Auer* deference is warranted by adopting a five part test that must be satisfied for it to apply.

#### **Water Well Drilling Rules Are Taking Effect Immediately**

The water well drilling rules that have been working their way through the regulatory process have been finalized and are being adopted as emergency regulations which means they are taking effect immediately. We have provided links to these regulations in our KY Administrative Regulation section of this document. These

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regulations included sections on supply well construction practices and standards, certification of water well drillers and assistants and monitoring well construction and standards.

### **Lots of Oil & Gas Regulations in This Month's KY Administrative Register**

The Kentucky Division of Oil & Gas continues to reorganize and rewrite their regulations. In the August 2019 Administrative register there are 11 proposed amendments addressing a broad array of topics from well location and as drilled locations plats, bonds, plugging wells gas storages reservoirs, underground injection control, gathering lines and others. Links to these and other oil and gas regulations can be found in the regulation section of this issue. To get all regulations relating to oil and gas into a single regulatory chapter, the Division has repealed 805 KAR Chapter 9 Coal Bed Methane and inserted the relevant rules into the corresponding administrative regulations in 805 KAR Chapter 1.

#### **Dates to Remember**

- August 12, 2019-Effective date, Jefferson County New VOC Water Separator rule;
- August 12, 2019- NESHAP Municipal Solid Waste Landfills, comments due;
- August 12, 2019- Revision of Well Head operational standards & corrective actions, comments due;
- August 19, 2019 – Request for information deadline for Lockout/Tagout;
- August 21, 2019- Pharmaceutical Rule effective date;
- August 21, 2019-Comments due Jefferson County SIP Revision;
- August 27, 2019 – Request for public comments, deadline for paperwork requirements on Process Safety Management of Highly Hazardous Chemicals;
- August 29, 2019-Comments due EPA Approval of Cross State Air Pollution Rule;
- September 6, 2019-Effective date repeal of Clean Power Plan, Finalized American Clean Energy Guidelines; Finalized Regs for State plans implementing emission guidelines.

## **KENTUCKY REGULATIONS**

### **Emergency Regulations**

These emergency administrative regulations are being promulgated as required by Senate Bill 32 of 2019. These regulations address well construction, certification of water well drillers & driller assistants and monitoring well construction practices and standards. These

emergency administrative regulations are necessary to protect human health and the environment while making the certification program immediately available. These emergency administrative regulations shall be replaced by an ordinary administrative regulation. The ordinary administrative regulation is identical to this emergency administrative regulation.

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**Division of Water**

401 KAR 6:001E Definitions  
 401 KAR 6:310E Supply Well Construction Practices & Standards,  
 401 KAR 6:320E Certification of Water Well Drillers & Assistants,  
 401 KAR 6:350E Monitoring Well Construction & Standards,

**Ordinary Administrative Regulations In Process**

Department for Environmental Protection Regulations

<https://apps.legislature.ky.gov/law/kar/title401.htm>

**Division of Water**

401 KAR 006:001 Definitions  
 401 KAR 006:310 Water supply well construction practices and standards.  
 401 KAR 006:320 Certification of water well drillers and water well driller assistants  
 401 KAR 006:350 Monitoring well construction practices ad standards

**Division for Air Quality**

401 KAR 051:010. Attainment status designations.

Department for Natural Resources Regulations

<https://apps.legislature.ky.gov/law/kar/title805.htm>

805 KAR 001:001 Definitions Section 805 KAR Chapter 001  
 805 KAR 001:020. Protection of freshwater zones.  
 805 KAR 001:030. Well location and as-drilled location plat, preparation, form and contents.  
 805 KAR 001:050. Bonds, requirements, cancellation  
 805 KAR 001:060. Plugging wells

805 KAR 001:080. Gas storage reservoirs; drilling, plugging in vicinity  
 805 KAR 001:110. Underground injection control  
 805 KAR 001:120. Operating or deepening existing wells and drilling deeper than the permitted depth  
 805 KAR 001:170. Content of the operations and reclamation plan  
 805 KAR 001:180. Production reporting  
 805 KAR 001:190. Gathering lines  
 805 KAR 001:200. General information associated with oil and gas permits

Repeal 805 KAR 9:011 Repeals 805 KAR Chapter 9 Coal Bed Methane- The administrative regulations in 805 KAR Chapter 9 were established as administrative regulations related to drilling for coalbed methane. The administrative regulations correspond closely to the administrative regulations in 805 KAR Chapter 1. In an effort to place drilling information in one chapter of Title 805 the department is proposing to repeal 805 KAR Chapter 9 administrative regulations and insert the relevant coalbed methane information into the corresponding administrative regulations in 805 KAR Chapter 1.

**FEDERAL REGULATIONS****AIR**

**National Emission Standards for Hazardous Air Pollutants: Municipal Solid Waste Landfills Residual Risk and Technology Review**

**AGENCY:** EPA

**ACTION:** Proposed rule.

**SUMMARY:** The U.S Environmental Protection Agency (EPA) is proposing amendments to the National Emission Standards for Hazardous Air Pollutants

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(NESHAP): Municipal Solid Waste (MSW) Landfills source category. The EPA is proposing decisions concerning the residual risk and technology review (RTR). The EPA is also proposing amendments to correct and clarify regulatory provisions related to emissions during periods of startup, shutdown, and malfunction (SSM); revise wellhead operational standards and corrective action to improve effectiveness and provide compliance flexibility; reorganize rule text to incorporate provisions from the new source performance standards (NSPS) within this subpart; and add requirements for electronic reporting of performance test results. The EPA is also proposing minor changes to the MSW Landfills NSPS and Emission Guidelines and Compliance Times for MSW Landfills. Specifically, the EPA is proposing to add provisions to the most recent MSW Landfills NSPS and Emission Guidelines (EG) that would allow affected sources to demonstrate compliance with landfill gas control, operating, monitoring, recordkeeping, and reporting requirements of the most recent NSPS and EG by following the corresponding requirements in the MSW Landfills NESHAP.

**DATES:** Comments must be received on or before September 12, 2019.

<https://www.govinfo.gov/content/pkg/FR-2019-07-29/pdf/2019-14473.pdf>

**Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations**

**AGENCY:** EPA

**ACTION:** Final rule.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is finalizing three separate and distinct rulemakings. First, the EPA is repealing the Clean Power Plan (CPP) because the Agency has determined that the CPP exceeded the EPA's statutory authority under the Clean Air Act (CAA). Second, the EPA is finalizing the Affordable Clean Energy rule (ACE), consisting of Emission Guidelines for Greenhouse Gas (GHG) Emissions from Existing Electric Utility Generating Units (EGUs) under CAA section 111(d), that will inform states on the development, submittal, and implementation of state plans to establish performance standards for GHG emissions from certain fossil fuel fired EGUs. In ACE, the Agency is finalizing its determination that heat rate improvement (HRI) is the best system of emission reduction (BSER) for reducing GHG—specifically carbon dioxide (CO<sub>2</sub>)—emissions from existing coal-fired EGUs. Third, the EPA is finalizing new regulations for the EPA and state implementation of ACE and any future emission guidelines issued under CAA section 111(d).

**DATES:** Effective September 6, 2019.

<https://www.govinfo.gov/content/pkg/FR-2019-07-08/pdf/2019-13507.pdf>

**Approval and Promulgation of State Plans for Designated Facilities and Pollutants; West Virginia; Control of Emissions from Existing Municipal Solid Waste Landfills**

**AGENCY:** EPA

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve a Clean Air Act (CAA) section 111(d) plan submitted by the West Virginia Department of Environmental Protection (WVDEP). This plan was submitted to fulfill the requirements of the CAA and in response to the EPA's promulgation of

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Emissions Guidelines and Compliance Times for municipal solid waste (MSW) landfills. The West Virginia plan establishes emission limits for existing MSW landfills and provides for the implementation and enforcement of those limits.

**DATES:** Written comments must be received on or before July 31, 2019.

<https://www.govinfo.gov/content/pkg/FR-2019-07-01/pdf/2019-13906.pdf>

### **Air Plan Approval; Kentucky: Cross State Air Pollution Rule**

**AGENCY:** EPA

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is proposing to approve revisions to the Kentucky State Implementation Plan (SIP) concerning the Cross-State Air Pollution Rule (CSAPR) submitted by Kentucky on September 14, 2018, as later clarified on December 18, 2018. Under CSAPR, large electricity generating units (EGUs) in Kentucky are subject to Federal Implementation Plans (FIPs) requiring the units to participate in CSAPR's federal trading program for annual emissions of nitrogen oxides (NOX), one of CSAPR's two federal trading programs for ozone season emissions of NOX, and one of CSAPR's two federal trading programs for annual emissions of sulfur dioxide (SO<sub>2</sub>). This action proposes to approve into the SIP the Commonwealth's regulations requiring large Kentucky EGUs to participate in CSAPR state trading programs for ozone season NOX emissions, annual NOX emissions, and annual SO<sub>2</sub> emissions integrated with the CSAPR federal trading programs, replacing the corresponding FIP requirements. EPA is proposing to approve the SIP revision concerning these CSAPR state trading programs because the SIP revision meets the requirements of the Clean Air Act (CAA or Act) and EPA's regulations for approval of a CSAPR

full SIP revision replacing the requirements of a CSAPR FIP. Under the CSAPR regulations, approval of this SIP revision would automatically eliminate Kentucky units' obligations to participate in CSAPR's federal trading programs for ozone season NOX emissions, annual NOX emissions, and annual SO<sub>2</sub> emissions under the corresponding CSAPR FIPs addressing interstate transport requirements for the 1997 annual fine particulate matter (PM<sub>2.5</sub>) national ambient air quality standards (NAAQS), the 1997 8-hour ozone NAAQS, the 2006 24-hour PM<sub>2.5</sub> NAAQS, and the 2008 8-hour ozone NAAQS. Approval of the SIP revision would also satisfy Kentucky's good neighbor obligation under the CAA to prohibit emissions which will significantly contribute to nonattainment or interfere with maintenance of the 1997 8-hour ozone NAAQS, 1997 annual PM<sub>2.5</sub> NAAQS, 2006 24-hour PM<sub>2.5</sub> NAAQS, and the 2008 8-hour ozone NAAQS.

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

<https://www.govinfo.gov/content/pkg/FR-2019-07-30/pdf/2019-16052.pdf>

### **Air Plan Approval; Kentucky: Jefferson County Existing and New VOC Water Separators Rule Revision**

**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 Kentucky Division of Air Quality (KDAQ), through a letter dated March 15, 2018. The changes were submitted by KDAQ on behalf of the Louisville Metro Air Pollution Control District (LMAPCD) (also referred to herein as Jefferson County) and make minor ministerial

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amendments to applicability dates and clarify standards applicable to both existing and new volatile organic compounds (VOC) water separators. EPA is approving these changes because they are consistent with the Clean Air Act (CAA or Act).

**DATES:** This rule will be effective August 12, 2019.

<https://www.govinfo.gov/content/pkg/FR-2019-07-11/pdf/2019-14631.pdf>

### **Air Plan Approval; KY; Existing Indirect Heat Exchangers for Jefferson County**

**AGENCY:** EPA

**ACTION:** Proposed rule.

**SUMMARY:** The Environmental Protection Agency (EPA or Agency) is proposing to approve 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), through a letter dated March 15, 2018. The revisions were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (District, also referred to herein as Jefferson County). The SIP revision includes changes to Jefferson County Regulations regarding existing indirect heat exchangers.

**DATES:** Comments must be received on or before August 21, 2019.

<https://www.govinfo.gov/content/pkg/FR-2019-07-22/pdf/2019-15418.pdf>

## **TOXICS**

### **Review of the Dust-Lead Hazard Standards and the Definition of Lead Based Paint**

**AGENCY:** EPA

**ACTION:** Final rule.

**SUMMARY:** Addressing childhood lead exposure is a priority for EPA. As part of EPA's efforts to reduce childhood lead exposure, EPA

evaluated the current dust-lead hazard standards (DLHS) and the definition of lead-based paint (LBP). Based on this evaluation, this final rule revises the DLHS from 40 mg/ft<sup>2</sup> and 250 mg/ft<sup>2</sup> to 10 mg/ft<sup>2</sup> and 100 mg/ft<sup>2</sup> on floors and windowsills, respectively. EPA is also finalizing its proposal to make no change to the definition of LBP because insufficient information exists to support such a change at this time.

**DATES:** This final rule is effective January 6, 2020.

<https://www.govinfo.gov/content/pkg/FR-2019-07-09/pdf/2019-14024.pdf>

## **OSHA**

### **The Control of Hazardous Energy (Lockout/Tagout)**

**AGENCY:** OSHA, DOL.

**ACTION:** Request for Information (RFI).

**SUMMARY:** The control of hazardous energy is regulated under OSHA's control of hazardous energy (Lockout/ Tagout) standard. The standard's purpose is to protect workers from the dangers of hazardous energy. This RFI seeks information regarding two areas where modernizing the Lockout/Tagout standard might better promote worker safety without additional burdens to employers: control circuit type devices and robotics. OSHA's Lockout/Tagout standard currently requires that all sources of energy, including energy stored in the machine itself, be controlled during servicing and maintenance of machines and equipment using an energy-isolating device (EID). Control circuit type devices are specifically excluded from OSHA's definition of an EID and are thus not a compliant method of controlling hazardous energy during service and maintenance activities. But technological advances since the standard was issued in 1989 suggest that, at least in some circumstances,

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control circuit type devices may be at least as safe as EIDs. OSHA requests information, data, and comments that would assist the agency in determining under what conditions control circuit type devices could safely be used for the control of hazardous energy. OSHA may also consider changes to the Lockout/ Tagout standard that address hazardous energy control for new robotics technologies. Employers are increasingly using robots and robotic components in their workplaces. OSHA would like to know more about what hazards and benefits this presents with respect to control of hazardous energy, safeguards that can be used, increased efficiencies that result, and any other information related to ensuring employee safety in interfacing with robots. OSHA will use the information received in response to this RFI to determine what action, if any, it may take to reduce regulatory burdens while maintaining worker safety.

**DATES:** Submit comments on or before August 19, 2019.

<https://www.govinfo.gov/content/pkg/FR-2019-05-20/pdf/2019-10247.pdf>

<https://www.govinfo.gov/content/pkg/FR-2019-06-28/pdf/2019-13811.pdf>

**The Standard on Process Safety Management of Highly Hazardous Chemicals; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements**

**AGENCY:** OSHA, Labor.

**ACTION:** Request for public comments.

**SUMMARY:** OSHA solicits public comments concerning its proposal to extend and revise the Office of Management and Budget's (OMB) approval of the information collection requirements contained in the Standard on Process Safety Management (PSM) of Highly Hazardous Chemicals.

**DATES:** Comments must be submitted (postmarked, sent, or received) by August 27, 2019.

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