



SMG Environmental, Health & Safety Regulatory Update

March 2020/ Karen Thompson 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 and safety. This is not an all-encompassing list of regulations being considered at the state or federal level. Contact us 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 contact Karen Thompson, karent@smithmanage.com or Jami Arnold, jamia@smithmanage.com

Updates

Since early March we all have been practicing social distancing, quarantining, or at the least more hand washing. We hope our newsletter finds all of you safe and healthy. During the country's battle with the COVID-19 virus, our initial concerns are with healthy family and coworkers.

Some of you are essential businesses supplying medical devices, PPE, food, utilities, and chemicals. Remember, if your facility has to ramp up operations, check your permits. Air permits in particular may have production or emission limits that you will exceed. Non-essential facilities that may be idling, think about who will be conducting required inspections, method 9 emissions observations, and keeping up with records during this time. As of now, EPA nor Kentucky has provided relief in compliance with regulations or permits. Now is the time to make sure you are keeping good records and noting any exceptions with reasons for missing or delayed inspections or records.

There may be decisions made at the state level on a case by case basis for certain monitoring or reporting requirements. Information we have received indicates you should contact the Director of the Division by email with any such requests.

As always, we are available to assist you. During this time, our team is practicing social distancing and teleworking. You can reach us by email or by phone.

Priorities have shifted during the legislative session because of COVID -19 and the ever-important budget. To date, two items related to environmental, health and safety have become effective.

House Joint Resolution 8 - A JOINT RESOLUTION directing the Energy and Environment Cabinet and the Louisville Metro Air Pollution Control District to determine the environmental benefits, related costs, and potential alternatives to the federal reformulated gasoline requirements currently imposed in Jefferson County and partial areas in Bullitt and Oldham Counties.

The State and stakeholders in Northern Kentucky were successful in rolling back the use of reformulated gas. The State is asking that the Cabinet and local Air District look at ways to roll back reformulated gas use in Louisville.

This task may be harder than what Northern Kentucky had to do since Louisville remains in nonattainment status. Everyone will be looking at the ozone numbers this summer. The State Division for Air Quality and the Louisville Air District will have to evaluate other avenues to come into compliance with the Ozone standard, which means this could impact local businesses with air permits.

House Bill 44 – An Act relating to key infrastructure assets. It amends KRS 511.100 to change the definition of "key infrastructure assets" to specify that natural gas or petroleum pipelines are the type of pipelines covered in the definition and include other types of infrastructure assets; amends KRS 512.020 to include tampering with, impeding, or inhibiting operations of a key infrastructure asset in the offense of criminal mischief in the first degree; creates a new section of KRS 411 that a civil action may be maintained against a person that compensates or remunerates a person to violate KRS 512.020 and the compensated person is convicted of criminal mischief in the first degree.

Several organizations have pushed for this legislation over the last few years. This bill adds above ground natural gas or petroleum pipelines and related facilities and cable television headend to the list of "infrastructure assets". The Act addresses the use of "unmanned aircraft system" (drones) flying over our key infrastructures without permission, which is now considered trespassing.

NPDES MSGP of Stormwater associated with Industrial Activities – Pay attention to this one. Even though Kentucky has primacy, our permits are drafted with EPA multi-sector general permits in mind. With any update, there are some good and bad pieces to it. It all depends on what your facility manufactures. A few items for you to look at include universal benchmarking for all sectors, impaired waters monitoring, and EPA's proposal to update benchmark values for some metals. We have provided the summary and link to the federal register below. Comments are due May 1, 2020.

Dates to Remember

- March 12, 2020 - National Emission Standards for Hazardous Air Pollutants: Asphalt Processing and Asphalt Roofing Manufacturing Residual Risk and Technology Review became effective.
- April 10, 2020 - Protection of Stratospheric Ozone: Revisions to the Refrigerant Management Program's Extension to Substitutes becomes effective
- April 11, 2020 – Comments due on Financial Responsibility Requirements Under CERCLA Section 108(b) for Facilities in the Chemical Manufacturing Industry
- April 13, 2020 - Air Plan Approval; Kentucky; Infrastructure Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standard comments due.
- May 1, 2020 – Comments due on NPDES 2020 Issuance of the MSGP for Stormwater Discharges Associated with Industrial Activity
- May 26, 2020 - Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews for 25 Southeastern Species comments due.

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April 1, 2020 Administrative Register of Kentucky

AS AMENDED

Department for Environmental Protection

401 KAR 063:010. Fugitive emission

Federal Register March 2020

National Pollutant Discharge Elimination System (NPDES) 2020 Issuance of the Multi-Sector General Permit for Stormwater Discharges Associated with Industrial Activity

AGENCY: Environmental Protection Agency

ACTION: **Notice; request for public comment.**

SUMMARY: All ten of the Environmental Protection Agency's (EPA) Regions are proposing for public comment the 2020 National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges associated with industrial activity, also referred to as the "2020 Multi-Sector General Permit (MSGP)" or the "proposed permit." The proposed permit, once finalized, will replace the EPA's existing MSGP that will expire on June 4, 2020. The EPA proposes to issue this permit for five (5) years, and to provide permit coverage to eligible operators in all areas of the country where the EPA is the NPDES permitting authority, including Idaho, Massachusetts, New Hampshire, and New Mexico, Indian country lands, Puerto Rico, the District of Columbia, and most U.S. territories and protectorates. The EPA seeks comment on the proposed permit and on the accompanying fact sheet, which contains supporting documentation. This Federal Register document

describes the proposed permit and includes specific topics on which the EPA is particularly seeking comment. Where the EPA proposes a new or modified provision, the Agency also solicits comment on alternatives to the proposal and/or not moving forward with the proposal in the final permit. The EPA encourages the public to read the fact sheet to better understand the proposed permit. The proposed permit and fact sheet can be found at <https://www.epa.gov/npdes/stormwater-discharges-industrial-activities>.

DATES: **Comments must be received on or before May 1, 2020.** Under the Paperwork Reduction Act, comments on the information collection provisions must be received by the Office of Management and Budget (OMB) on or before April 1, 2020.

<https://www.govinfo.gov/content/pkg/FR-2020-03-02/pdf/2020-04254.pdf>

Announcement of Preliminary Regulatory Determinations for Contaminants on the Fourth Drinking Water Contaminant Candidate List

AGENCY: Environmental Protection Agency

ACTION: **Request for public comment.**

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SUMMARY: The Safe Drinking Water Act (SDWA), as amended in 1996, requires the Environmental Protection Agency (EPA) to make regulatory determinations every five years on at least five unregulated contaminants. A regulatory determination is a decision about whether or not to begin the process to propose and promulgate a national primary drinking water regulation (NPDWR) for an unregulated contaminant. A preliminary regulatory determination lays out and takes comment on EPA's view about whether certain unregulated contaminants meet three statutory criteria. After EPA considers public comment, EPA makes a final determination. The unregulated contaminants included in a regulatory determination are chosen from the Contaminant Candidate List (CCL), which the SDWA requires the EPA to publish every five years. The EPA published the fourth CCL (CCL 4) in the Federal Register on November 17, 2016. This document presents the preliminary regulatory determinations and supporting rationale for the following eight of the 109 contaminants listed on CCL 4: Perfluorooctanesulfonic acid (PFOS), perfluorooctanoic acid (PFOA), 1,1-dichloroethane, acetochlor, methyl bromide (bromomethane), metolachlor, nitrobenzene, and Royal Demolition eXplosive (RDX). The Agency is making preliminary determinations to regulate two contaminants (i.e., PFOS and PFOA) and to not regulate six contaminants (i.e., 1,1-dichloroethane, acetochlor, methyl bromide, metolachlor, nitrobenzene, and RDX). The EPA seeks comment on these preliminary determinations. The EPA is also presenting an update on three other CCL 4 contaminants (strontium, 1,4-dioxane, and 1,2,3-trichloropropane).

DATES: Comments must be received on or before May 11, 2020.

<https://www.govinfo.gov/content/pkg/FR-2020-03-10/pdf/2020-04145.pdf>

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Clean Air Act 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. In 2016, the EPA amended the regulatory refrigerant management requirements and extended requirements that previously applied only to refrigerants containing an ozone-depleting substance to substitute refrigerants that are subject to the venting prohibition (i.e., those that have not been exempted from that prohibition) such as hydrofluorocarbons. Based on changes to the legal interpretation that supported that 2016 rule, this action revises some of those requirements—specifically, the appliance maintenance and leak repair provisions—so they apply only to equipment using refrigerant containing an ozone-depleting substance.

DATES: This final rule is **effective on April 10, 2020.**

<https://www.govinfo.gov/content/pkg/FR-2020-03-11/pdf/2020-04773.pdf>

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

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action finalizes the residual risk and technology review (RTR) conducted for the

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Asphalt Processing and Asphalt Roofing Manufacturing source categories regulated under national emission standards for hazardous air pollutants (NESHAP). In addition, we are taking final action to: Correct and clarify regulatory provisions related to emissions during periods of startup, shutdown, and malfunction (SSM); revise monitoring requirements for a control device used to comply with the particulate matter (PM) standards; 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 (NOCS) reports; and include other technical corrections to improve consistency and clarity. We are making no revisions to the numerical emission limits based on the residual risk analysis or technology review. Although these amendments are not anticipated to result in reductions in emissions of hazardous air pollutants (HAP), they will improve compliance and implementation of the rule.

DATES: This final rule is effective on March 12, 2020. The incorporation by reference (IBR) of certain publications listed in the rule is approved by the Director of the Federal Register as of March 12, 2020.

<https://www.govinfo.gov/content/pkg/FR-2020-03-12/pdf/2020-02369.pdf>

Air Plan Approval; Kentucky; Infrastructure Requirements for the 2015 8-Hour Ozone National Ambient Air Quality Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: **Proposed rule.**

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of the State Implementation Plan (SIP) submission, provided by the Commonwealth of Kentucky, Energy and Environment Cabinet,

Department for Environmental Protection, through the Kentucky Division for Air Quality (KDAQ), on January 9, 2019, to demonstrate that the Commonwealth meets the infrastructure requirements of the Clean Air Act (CAA or Act) for the 2015 8-hour ozone national ambient air quality standard (NAAQS). Whenever EPA promulgates a new or revised NAAQS, the CAA requires that each state adopt and submit a SIP for the implementation, maintenance and enforcement of each such NAAQS. KDAQ certified that the Kentucky SIP contains provisions that ensure the 2015 8-hour ozone NAAQS is implemented, enforced, and maintained in Kentucky. EPA is proposing to determine that Kentucky's submission addresses certain infrastructure elements for the 2015 8-hour ozone NAAQS.

DATES: Written comments must be received on or before **April 13, 2020.**

National Emission Standards for Hazardous Air Pollutants: Solvent Extraction for Vegetable Oil Production Residual Risk and Technology Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: **Final rule.**

SUMMARY: This action finalizes the residual risk and technology review (RTR) conducted for the Solvent Extraction for Vegetable Oil Production source category regulated under national emission standards for hazardous air pollutants (NESHAP). Based on the results of the U.S. Environmental Protection Agency's (EPA's) risk review, the Agency is finalizing the decision that risks due to emissions of air toxics from this source category are acceptable and that the current NESHAP provides an ample margin of safety to protect public health. Under the technology review, the EPA is finalizing the decision that there are no developments in practices, processes, or control technologies

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that necessitate revision of the standards. Therefore, the EPA is finalizing no revisions to the numerical emission limits based on the risk and technology reviews. We are taking final action to correct and clarify regulatory provisions related to emissions during periods of startup, shutdown, and malfunction (SSM), including removing general exemptions for periods of SSM, adding alternative work practice standards for periods of initial startup for new or significantly modified sources, and making other minor clarifications or corrections. The EPA is also taking final action to add provisions for electronic reporting of certain notifications and reports and performance test results; and make other minor clarifications and corrections. These final amendments will result in improved compliance and implementation of the rule.

DATES: This final rule is **effective on March 18, 2020.**

<https://www.govinfo.gov/content/pkg/FR-2020-03-18/pdf/2020-04459.pdf>

Strengthening Transparency in Regulatory Science

AGENCY: Environmental Protection Agency (EPA).

ACTION: **Supplemental notice of proposed rulemaking.**

SUMMARY: This supplemental notice of proposed rulemaking (SNPRM) includes clarifications, modifications and additions to certain provisions in the Strengthening Transparency in Regulatory Science Proposed Rulemaking (“2018 proposed rulemaking,” Ref. 1), published on April 30, 2018. This SNPRM proposes that the scope of the rulemaking apply to influential scientific information as well as significant regulatory decisions. This notice proposes definitions and clarifies that the proposed rulemaking applies to data and models underlying both pivotal science and

pivotal regulatory science. In this SNPRM, EPA is also proposing a modified approach to the public availability provisions for data and models that would underly significant regulatory decisions and an alternate approach. Finally, EPA is taking comment on whether to use its housekeeping authority independently or in conjunction with appropriate environmental statutory provisions as authority for taking this action.

DATES: Comments must be received on or before **April 17, 2020.**

<https://www.govinfo.gov/content/pkg/FR-2020-03-18/pdf/2020-05012.pdf>

USF&W

Endangered and Threatened Wildlife and Plants; Initiation of 5-Year Status Reviews for 25 Southeastern Species

AGENCY: Fish and Wildlife Service, Interior.

ACTION: **Notice of initiation of reviews; request for information.**

SUMMARY: We, the U.S. Fish and Wildlife Service, are initiating 5-year status reviews of 25 species under the Endangered Species Act, as amended. A 5-year review is an assessment of the best scientific and commercial data available at the time of the review. We are requesting submission of information that has become available since the last reviews of these species.

DATES: To allow us adequate time to conduct these reviews, we must receive your **comments or information on or before May 26, 2020.** However, we will continue to accept new information about any listed species at any time.

<https://www.govinfo.gov/content/pkg/FR-2020-03-25/pdf/2020-06223.pdf>

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