



SMG Environmental, Health & Safety Regulatory Update

July 2020/ Karen Thompson and Nick Konefal

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

Updates

We missed sending out the Update last month with holidays and work. While we are still working through the new normal with Covid-19 still on everyone's radar, regulations and compliance with those regulations are still on EPA and the States radar. Kentucky DEP has been performing "virtual" inspections for RCRA. This has mostly been requests for required documentation. For other program areas on-site visits are starting to occur. However, no new regulations were published in the Kentucky Administrative Record July 1 or August 1 for the Department for Environmental Protection or KYOSH.

EPA has published several items of interest over the last 60 days including the final CWA Section 401 Certification Rule, several changes to the Kentucky SIP, MACT standards for ethylene production, modernizing the ignitable liquids determination, lead clearance levels and updates to TRI reporting and trade secret claims under the Community Right to Know.

What's happening with Kentucky's SIP?

July 2020 has seen five final or proposed rules published with regard to the Kentucky State Implementation Plan (SIP). Effective August 10, 2020, the Jefferson County Air Pollution Control District (APCD) regulation 1.04 v7 is approved into the SIP for Jefferson County. It includes a new requirement for submitting reports on the conducted performance tests. EPA is proposing to approve another SIP revision to the Jefferson County portion of SIP. The revision and makes changes to the definition of "volatile organic compound". These changes were requested in a letter to EPA dated September 5, 2019. Kentucky requested additional changes in a March 4, 2020, letter to EPA. The changes make minor changes for clarity, remove an exemption for public hearings for permitting actions, and amend the procedures for open records requests to maintain consistency with the Kentucky Open Records Act (KORA).

EPA has specifically proposed to approve portions of the Kentucky infrastructure SIP submission (January 11, 2019) that address the prevention of significant deterioration (PSD) and modeling requirements for the 2015 8-hour ozone NAAQS.

EPA has also proposed to approve the rules for Florida, Georgia, the Jefferson County portion of Kentucky, Mississippi, North Carolina, and South Carolina that modify the definition of chemical process plant to exclude

ethanol manufacturing facilities that produce ethanol by natural fermentation processes, which is consistent with an EPA regulation completed in 2007.

Check the “Dates to Remember” for deadlines to provide comments.

The Clean Water Act Section 401 Certification Rule

On September 11, 2020, the “Clean Water Act (CWA) Section 401 Certification Rule” will become effective. CWA section 401 is a direct grant of authority to States (and Tribes that have been approved for “treatment as a State” status) to review for compliance with appropriate federal, State, and Tribal water quality requirements any discharge into a water of the United States that may result from a proposed activity that requires a federal license or permit. The final rule is intended to increase the predictability and timeliness of CWA section 401 certification actions by clarifying timeframes for certification, the scope of certification review and conditions, and related certification requirements and procedures.

Under the final rule, the State (and Tribes that have been approved for “treatment as a State” status) must act on a request for certification within one year of receiving a certification request. If no action is taken by the certifying authority within one year *“the certification requirements of this subsection shall be waived with respect to such Federal application.”* The final rule is effective on September 11, 2020.

Final Rule Details:

- EPA is replacing the entirety of the 1971 certification regulations at 40 CFR part 121 with this final rule.
- The final rule provides that, to trigger section 401, a discharge must be from a point source.
- Under the final rule section 401 is triggered by the potential for a discharge to occur, rather than the presence of an actual discharge.
- Potential for a discharge to occur is determined by the certifying authority (State and Tribes) during its evaluation of the proposed project. This final rule does not provide a process for certifying authorities or project proponents to determine whether a federally licensed or permitted project may have a potential or actual discharge.
- EPA observes that, if a certifying authority or project proponent determines after the certification process is triggered that there is no actual discharge from the proposed federal licensed or permitted project and no potential for a discharge, there is no longer a need to request or obtain certification. The EPA recommends that the project proponent discuss the matter with and provide supporting information and documentation to the certifying authority and the federal agency.
- Requirement in section 121.4 of the final rule that all project proponents must submit a request for a pre-filing meeting at least 30 days in advance of submitting a certification request.
- After receiving the pre-filing meeting request, the certifying authority is encouraged to contact the federal agency and to identify points of contact, to facilitate information sharing between the certifying authority and Federal agency throughout the certification process.
- Project proponents should identify the nature of the discharge, including (as appropriate) the potential volume, extent, or type of discharge associated with the proposed project.
- Under the final rule, a certifying authority may waive its opportunity to certify in two ways

Lexington

1405 Mercer Road
Lexington, KY 40511
859-231-8936
859-231-8997 fax

Louisville

1860 B Williamson Court
Louisville, KY 40223
502-587-6482
502-587-6572 fax



1. The certifying authority may waive expressly by issuing a written statement that it is waiving certification.
2. If the certifying authority fails or refuses to act within the reasonable period, the certification requirement will be deemed waived by the federal licensing or permitting agency.

How Could This Affect You?

- Permit applicants of federally licensed or permitted activities should expect a more in-depth review of their proposed project to determine if the proposed project has any potential for a discharge to occur, hence triggering section 401.
- Applicants who have triggered section 401 should experience increased consistency in the certification process and timeliness of certification with the authorizing State or Tribe required to act on a request for certification with one year.
- Potential for discharge has been loosely defined to allow for states to make that interpretation. Understanding how your state interprets potential discharge will be key to developing a successful project.

Dates to Remember

- August 5, 2020 – Comments due on revisions to Jefferson County VOC definition.
- August 10, 2020 – EPA is taking final action to approve changes to the Jefferson County portion of the Kentucky State Implementation Plan (SIP). The SIP revision includes changes to Jefferson County Regulations regarding performance tests. Effective Date.
- August 19, 2020 - Comments due on changes to Definition of Chemical Process Plants Under State Prevention of Significant Deterioration Regulations in FL, GA, KY, MS, NC, and SC SIPs.
- August 21, 2020 – Comments due on Changes to Jefferson County APCD Administrative Procedures.
- September 11, 2020 – Clean Water Act Section 401 Certification Rule becomes effective.

Federal Register June/July 2020

AIR QUALITY

Air Plan Approval; KY: Jefferson County Performance Tests

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), Division of Air Quality, through a letter dated September 5, 2019. The changes were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District

Lexington

1405 Mercer Road
Lexington, KY 40511
859-231-8936
859-231-8997 fax

Louisville

1860 B Williamson Court
Louisville, KY 40223
502-587-6482
502-587-6572 fax



(District, also referred to herein as Jefferson County). The SIP revision includes changes to Jefferson County Regulations regarding performance tests.

DATES: This rule is effective **August 10, 2020**.

<https://www.govinfo.gov/content/pkg/FR-2020-07-10/pdf/2020-13734.pdf>

Air Plan Approvals; KY; Prevention of Significant Deterioration and Modeling Infrastructure Requirements for 2015 Ozone NAAQS

AGENCY: EPA

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve portions of the Kentucky infrastructure State Implementation Plan (SIP) submission for the 2015 8-hour ozone National Ambient Air Quality Standards (NAAQS) submitted to EPA on January 11, 2019. Whenever EPA promulgates a new or revised NAAQS, the Clean Air Act (CAA or Act) requires that states adopt and submit a SIP submission to establish that the state's implementation plan meets infrastructure requirements for the implementation, maintenance, and enforcement of each such NAAQS. Specifically, EPA is proposing to approve portions of the Kentucky infrastructure SIP submission that address the prevention of significant deterioration (PSD) and modeling requirements for the 2015 8-hour ozone NAAQS. EPA is proposing to approve these portions of the submission as they are consistent with the CAA.

DATES: Comments must be received on or **before July 27, 2020**.

<https://www.govinfo.gov/content/pkg/FR-2020-07-06/pdf/2020-13893.pdf>

Air Plan Approval; Kentucky: Revisions to Jefferson County VOC Definition

AGENCY: EPA

ACTION: **Proposed rule.**

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a SIP revision to the Jefferson County portion of the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky (Commonwealth), through the Energy and Environment Cabinet (Cabinet) on September 5, 2019. The revision was submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (LMAPCD) and makes changes to the definition of "volatile organic compound" (VOC). EPA is proposing to approve the changes amending the definition of VOC because the Commonwealth has demonstrated that the changes are consistent with the Clean Air Act (CAA or Act).

DATES: Comments must be received on or **before August 5, 2020**.

<https://www.govinfo.gov/content/pkg/FR-2020-07-06/pdf/2020-14093.pdf>

National Emission Standards for Hazardous Air Pollutants: Generic Maximum Achievable Control Technology Standards Residual Risk and Technology Review for Ethylene Production

AGENCY: EPA

ACTION: **Final rule.**

SUMMARY: This action finalizes the residual risk and technology review (RTR) conducted for the Ethylene Production source category regulated under National Emission Standards for Hazardous Air Pollutants (NESHAP). In addition, the U.S. Environmental Protection Agency (EPA) is 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 work

Lexington

1405 Mercer Road
Lexington, KY 40511
859-231-8936
859-231-8997 fax

Louisville

1860 B Williamson Court
Louisville, KY 40223
502-587-6482
502-587-6572 fax



practice standards for periods of SSM where appropriate, and clarifying regulatory provisions for certain vent control bypasses. The EPA is also taking final action to revise requirements for heat exchange systems; add monitoring and operational requirements for flares; add provisions for electronic reporting of performance test results and other reports; and include other technical corrections to improve consistency and clarity. We estimate that these final amendments will reduce hazardous air pollutants (HAP) emissions from this source category by 29 tons per year (tpy) and reduce excess emissions of HAP from flares by an additional 1,430 tpy.

DATES: This final rule is **effective on July 6, 2020**. The incorporation by reference (IBR) of certain publications listed in the rule is approved by the Director of the Federal Register as of July 6, 2020.

<https://www.govinfo.gov/content/pkg/FR-2020-07-06/pdf/2020-05898.pdf>

NESHAP: Surface Coating of Automobiles and Light-Duty Trucks; Miscellaneous Metal Parts and Products; Plastic Parts and Products; Large Appliances; Printing, Coating, and Dyeing of Fabrics and Other Textiles; and Metal Furniture Residual Risk and Technology Reviews

AGENCY: EPA.

ACTION: **Final rule.**

SUMMARY: The U.S. Environmental Protection Agency (EPA) is taking final action on the residual risk and technology reviews (RTRs) conducted for the Surface Coating of Automobiles and Light-Duty Trucks (ALDT); Surface Coating of Miscellaneous Metal Parts and Products (MMPP); and the Surface Coating of Plastic Parts and Products (PPP) source categories regulated under national emission standards for hazardous air pollutants (NESHAP). These final amendments also address emissions during periods of startup, shutdown,

and malfunction (SSM); electronic reporting of 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. Several miscellaneous technical amendments were also made to improve the clarity of the rule requirements. We are making no revisions to the numerical emission limits based on these risk analyses or technology reviews. This notice also finalizes technical corrections to the NESHAP for Surface Coating of Large Appliances; NESHAP for Printing, Coating, and Dyeing of Fabrics and Other Textiles; and NESHAP for Surface Coating of Metal Furniture.

DATES: This final rule is **effective on July 8, 2020**. The incorporation by reference (IBR) of certain publications listed in the rule is approved by the Director of the Federal Register as of July 8, 2020. The incorporation by reference of certain other publications listed in the rule was approved by the Director of the Federal Register as of June 25, 2004.

<https://www.govinfo.gov/content/pkg/FR-2020-07-08/pdf/2020-05908.pdf>

Air Plan Approval; KY; Jefferson County Administrative Procedures

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) on March 4, 2020. The changes were submitted by the Cabinet on behalf of the Louisville Metro Air Pollution Control District (District) and make minor changes for clarity, remove an exemption for public hearings for permitting actions, and amend the procedures for open records

Lexington

1405 Mercer Road
Lexington, KY 40511
859-231-8936
859-231-8997 fax

Louisville

1860 B Williamson Court
Louisville, KY 40223
502-587-6482
502-587-6572 fax



requests to maintain consistency with the Kentucky Open Records Act (KORA).

DATES: Comments must be received on or **before August 21, 2020.**

<https://www.govinfo.gov/content/pkg/FR-2020-07-22/pdf/2020-15536.pdf>

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

AGENCY: EPA

ACTION: **Final rule.**

SUMMARY: The Environmental Protection Agency (EPA) is approving portions of a 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 has in this action determined that the Kentucky infrastructure SIP submissions satisfy certain required infrastructure elements for the 2015 8-hour ozone NAAQS.

DATES: This rule is **effective July 1, 2020.**

<https://www.govinfo.gov/content/pkg/FR-2020-06-01/pdf/2020-10062.pdf>

Air Plan Approval; FL; GA; KY; MS; NC; SC: Definition of Chemical Process Plants Under State Prevention of Significant Deterioration Regulations

AGENCY: EPA

ACTION: **Proposed rule.**

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve revisions to the State Implementation Plans (SIP) for Florida, Georgia, the Jefferson County portion of Kentucky, Mississippi, North Carolina, and South Carolina. The SIP revisions incorporate changes to the definition of chemical process plants under the States' Prevention of Significant Deterioration (PSD) regulations. Consistent with an EPA regulation completed in 2007, EPA is proposing to approve the rules for Florida, Georgia, the Jefferson County portion of Kentucky, Mississippi, North Carolina, and South Carolina that modify the definition of chemical process plant to exclude ethanol manufacturing facilities that produce ethanol by natural fermentation processes. This will clarify that the PSD major source applicability threshold in the SIPs for these ethanol plants is 250 tons per year (tpy) (rather than 100 tpy) and removes the requirement to include fugitive emissions when determining if the source is major for PSD. EPA is proposing to find that the changes to the state and local rules described herein are approvable because the Agency believes that they are consistent with EPA regulations governing state PSD programs and will not interfere with any applicable requirement concerning attainment and reasonable further progress (as defined in section 171 of the Clean Air Act (CAA or Act)), or any other applicable requirement of the CAA.

DATES: Comments must be received on or **before August 19, 2020.**

<https://www.govinfo.gov/content/pkg/FR-2020-07-20/pdf/2020-14425.pdf>

Lexington

1405 Mercer Road
Lexington, KY 40511
859-231-8936
859-231-8997 fax

Louisville

1860 B Williamson Court
Louisville, KY 40223
502-587-6482
502-587-6572 fax



Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process; Extension of Comment Period and Public Hearing

AGENCY: EPA

ACTION: **Notice of proposed rulemaking;** extension of comment period and notification of public hearing.

SUMMARY: On June 11, 2020, the Environmental Protection Agency (EPA) published the proposed rulemaking "Increasing Consistency and Transparency in Considering Benefits and Costs in the Clean Air Act Rulemaking Process." The EPA is extending the comment period on the proposed rulemaking. The EPA is also announcing that a virtual public hearing will be held for the proposed rulemaking.

DATES: Comments: The comment period for the proposed rulemaking published June 11, 2020 (85 FR 35612), is extended. The EPA must receive comments on the proposed action on or **before August 3, 2020.**

<https://www.govinfo.gov/content/pkg/FR-2020-06-19/pdf/2020-13222.pdf>

WATER

Clean Water Act Section 401 Certification Rule

AGENCY: EPA

ACTION: **Final rule.**

SUMMARY: The Environmental Protection Agency (EPA) is publishing this final rule to update and clarify the substantive and procedural requirements for water quality certification under Clean Water Act (CWA or the Act) section 401. CWA section 401 is a direct grant of authority to States (and Tribes that have been approved for "treatment as a State" status) to review for compliance with appropriate federal, State, and Tribal water quality requirements any discharge into a water of the United States that may result from a

proposed activity that requires a federal license or permit. This final rule is intended to increase the predictability and timeliness of CWA section 401 certification actions by clarifying timeframes for certification, the scope of certification review and conditions, and related certification requirements and procedures.

DATES: This rule is effective on **September 11, 2020.**

https://www.epa.gov/sites/production/files/2020-07/documents/clean_water_act_section_401_certification_rule.pdf

Extension of Public Comment Period: Draft Ambient Water Quality Criteria Recommendations for Lakes and Reservoirs of the Conterminous United States: Information Supporting the Development of Numeric Nutrient Criteria

AGENCY: EPA

ACTION: **Notice of availability; extension of comment period.**

SUMMARY: The United States Environmental Protection Agency (EPA) is extending the comment period for the Draft Ambient Water Quality Criteria Recommendations for Lakes and Reservoirs of the Conterminous United States: Information Supporting the Development of Numeric Nutrient Criteria, published in the Federal Register on May 22, 2020. In response to stakeholder requests, the comment period will be extended for an additional 30 days, from July 21, 2020 to August 20, 2020.

DATES: The comment period for the notice of availability published May 22, 2020 (85 FR 31184), is extended. The EPA must receive comments on or **before August 20, 2020.**

<https://www.govinfo.gov/content/pkg/FR-2020-07-21/pdf/2020-15702.pdf>

Lexington

1405 Mercer Road
Lexington, KY 40511
859-231-8936
859-231-8997 fax

Louisville

1860 B Williamson Court
Louisville, KY 40223
502-587-6482
502-587-6572 fax



TANKS**Commonwealth of Kentucky: Tentative Approval of State Underground Storage Tank Program**

AGENCY: EPA

ACTION: **Proposed rule**; notice of tentative determination on application of the Commonwealth of Kentucky for final approval, public hearing opportunity, and public comment period.

SUMMARY: The Commonwealth of Kentucky (Commonwealth or State) has applied for final approval of its Underground Storage Tank (UST) Program under Subtitle I of the Resource Conservation and Recovery Act (RCRA or Act). The Environmental Protection Agency (EPA) has reviewed the Commonwealth's application and made the tentative decision that the State's UST Program application satisfies all the requirements necessary to qualify for final approval. The State's UST Program application is available for public review and comment. A public hearing will be held to solicit comments on the application if sufficient public interest is expressed. This Federal Register notice solicits requests for a public hearing and comments on the State's application.

DATES: Comments and/or request for a public hearing on this tentative determination must be received on or **before July 31, 2020**. A public hearing will be held no earlier than August 31, 2020 if sufficient public interest is expressed. The EPA will determine by August 17, 2020, whether there is sufficient interest to warrant a public hearing. The Commonwealth will be invited to participate in any public hearing held by the EPA on this action.

<https://www.govinfo.gov/content/pkg/FR-2020-07-01/pdf/2020-13763.pdf>

RCRA**Modernizing Ignitable Liquids Determinations**

AGENCY: EPA

ACTION: **Final rule**.

SUMMARY: The Environmental Protection Agency (EPA) is finalizing updates to the regulations for the identification of ignitable hazardous waste under the Resource Conservation and Recovery Act (RCRA) and to modernize the RCRA test methods that currently require the use of mercury thermometers. These revisions 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: This final rule **is effective on September 8, 2020**. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of September 8, 2020.

<https://www.govinfo.gov/content/pkg/FR-2020-07-07/pdf/2020-12695.pdf>

COMMUNITY RIGHT TO KNOW**Community Right-to-Know; Corrections to Toxics Release Inventory (TRI) Reporting Requirements**

AGENCY: EPA

ACTION: **Final rule**.

SUMMARY: EPA is correcting existing regulatory language for the Toxics Release Inventory (TRI) Program. EPA is making corrections that update identifiers, formulas, and names for certain TRI-listed chemicals, and updating the text that identifies which chemicals the 0.1 percent de minimis concentration applies to in order to remedy a cross-reference to a no-longer accurate Occupational Safety and Health Administration (OSHA) regulatory citation.

Lexington

1405 Mercer Road
Lexington, KY 40511
859-231-8936
859-231-8997 fax

Louisville

1860 B Williamson Court
Louisville, KY 40223
502-587-6482
502-587-6572 fax



These corrections maintain previous regulatory actions and do not alter existing reporting requirements or impact compliance burdens or costs.

DATES: This final rule is **effective on July 14, 2020.**

<https://www.govinfo.gov/content/pkg/FR-2020-07-14/pdf/2020-11013.pdf>

Emergency Planning and Community Right-to-Know Regulations: Trade Secrecy Claims and Emergency Planning Notification

AGENCY: EPA

ACTION: **Final rule; technical amendment.**

SUMMARY: The U.S. Environmental Protection Agency (EPA or the Agency) is issuing a technical amendment to update the program websites for trade secrecy regulations. This action amends the regulations to remove the outdated substantiation form for trade secrecy claims from the Code of Federal Regulations. The most current substantiation form is posted on EPA program websites. The Agency is also including clarification within a note in the regulations for state coordination of emergency response.

DATES: This final rule is **effective on July 24, 2020.**

<https://www.govinfo.gov/content/pkg/FR-2020-07-24/pdf/2020-15139.pdf>

LEAD

Review of Dust-Lead Post-Abatement Clearance Levels

AGENCY: EPA

ACTION: **Proposed rule.**

SUMMARY: Reducing childhood lead exposure is a priority for EPA. As part of EPA's efforts to reduce childhood lead exposure, backed by the President's Task Force on Environmental Health Risks and Safety Risks to Children, EPA evaluated the current dust-lead clearance levels

(DLCL). Clearance levels are currently defined as the maximum amount of lead permitted in dust on a surface following completion of an abatement activity. Surface dust is collected via dust wipe samples that are sent to a laboratory for analysis. The post-abatement dust-lead levels must be below the clearance levels. The DLCL have not changed since they were issued in 2001. EPA is now proposing to lower the DLCL from 40 micrograms of per square feet (mg/ft²) and 250 mg/ft² to 10 mg/ft² and 100 mg/ft² for floors and window sills, respectively. DATES: Comments must be received on or **before August 24, 2020**

<https://www.govinfo.gov/content/pkg/FR-2020-06-24/pdf/2020-13582.pdf>

Lexington

1405 Mercer Road
Lexington, KY 40511
859-231-8936
859-231-8997 fax

Louisville

1860 B Williamson Court
Louisville, KY 40223
502-587-6482
502-587-6572 fax

