



SMG Reg Watch

July 2014 / Scott R. Smith and Kori J. Andrews

Reg Watch 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 all 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?

Contact us at scottr.smith@smithmanage.com.

QUESTIONS, COMMENTS, ADDITIONAL INFORMATION

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Scott's Thoughts

The Kentucky Department for Natural Resources-Division of Oil & Gas has applied for primary enforcement of Class II-Underground Injection Control wells in Kentucky. Currently, EPA Region 4 administers the Class II program. If you recall, Kentucky's legislature provided authority for the Commonwealth to take this program. Associated documents are currently open for review and comment. [Public hearing](#) on this issue will be held September 23, 2014 at 6:30 at 2 Hudson Hollow Rd., Frankfort. EPA has been skeptical about Kentucky taking over this program due to their inability to show how

the agency will fully fund it. Let's find the money because this is something Kentucky should have taken over long ago.

EPA published a [Reconsideration of Additional Provisions of New Source Performance Standards](#) for the oil and gas industry on July 17, 2014 (a link and summary is contained in attached materials). The comment ends on August 18, 2014. On August 16, 2012 EPA published final new source performance for the oil and natural gas sector. Due to petitions received for administrative reconsideration the Agency published amendments on September 23, 2013. Following that action more petitions were filed. Contained in this notice (7/17/14), EPA clarifies requirements for the handling of flowback gases and liquids; defines a low pressure gas well; states requirements for determining the potential emissions of storage vessels that employ vapor recovery; provisions for storage vessels that are removed from service; and equipment subject to leak detection requirements. Due to the importance of this issue and a short comment period the industry needs to either request an extension to the comment period and/or conduct a quick review and provide the agency pointed comments.

On July 22 the U.S. Fish and Wildlife Service published a [policy proposal](#) to further involve landowners in the protection of at-risk species that have not yet been listed as threatened or endangered under the

Endangered Species Act. Participating landowners will be awarded “conservation credits” for the implementation of measures to protect such species which can then be utilized to offset post-listing mitigation requirements or traded to third parties (see link in attached materials).

EPA has released the 2013 Toxic Release Inventory (TRI) preliminary dataset, which contains toxic chemical release and pollution prevention data reported by facilities for the 2013 calendar year. The dataset is accessible through EPA’s [Envirofacts](#) systems.

The White House Rural Council recently announced the creation of the new [U.S. Rural Infrastructure Opportunity Fund](#) through which private entities can invest in job creating rural infrastructure projects across the country. An initial \$10 billion has been committed to the fund by CoBank, a national cooperative bank and a member of the Farm Credit System. The U.S. Department of Agriculture and other federal agencies will help to identify rural projects that could be potential beneficiaries of financing through this new fund and other private sources.

An Ohio Appeals Court has held that when parcels of vacant land are evaluated for property tax purposes, legally imposed use restrictions-designation as part of a federally

protected wetlands and the existence of a cease and desist order from the Army Corps of Engineers restricting the use of the property, must be considered in arriving at the value. [Madison Route 20, LLC v. Lake Cty. Bd. Of Revision](#), 2014-Ohio-3183 (11th District).

On June 25th, EPA released a [final risk assessment for trichloroethylene \(TCE\)](#). The assessment identified health risks from TCE exposures to consumers using spray aerosol degreasers and spray fixatives and the health risks to workers when using TCE as a degreaser and as a stain remover in dry cleaning. In a related issues the National Toxicology Program (NTP) issued a draft report last week recommending that TCE be reclassified from “reasonably anticipated to be a human carcinogen” to “known to be a human carcinogen”. The Peere-Revie Draft: Report on Carcinogens Monograph on Trichloroethylene was released June 27. The NTP’s recommendation to reclassify TCE may change as a result of the peer review.

EPA’s [proposed carbon dioxide rule for existing units](#), Fed Register 6/18/14, would affect other types of boilers and electrical generating units, including certain industrial boilers. If a source operates a boiler that supplies steam to an electrical generating turbine, the source should review EPA’s proposed CO2 regulation carefully to determine whether it may impact its boiler.

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Make sure you check out the links to new rules that would update air standards for new municipal solid waste landfills. The proposed rule applies to the release of methane and would require landfills constructed after the publication date of the proposed rule to capture two thirds of their methane and other air toxic emissions by 2023.

State Regulation Review

The following are Proposed Amendments that may be discussed at the August, 2014 meeting of the Administrative Regulation Review Subcommittee:

ENVIRONMENT CABINET: Department for Natural Resources: Office of the Reclamation Guaranty Fund: Bond and Insurance Requirements

[405 KAR 10:025](#). Extension of performance bond subsidization.

Federal Regulation Review

Fish & Wildlife Service, [Final Policy on Interpretation of the Phrase “Significant Portion of Its Range” in the Endangered Species Act’s Definitions of “Endangered Species” and “Threatened Species”](#)

Notice of Final Policy. The United States Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (collectively, the Services), announce a policy to provide an interpretation of the phrase ‘significant portion

of its range” in the Endangered Species Act’s (Act’s) definitions of “endangered species” and “threatened species.” The purpose of this final policy is to provide an interpretation and application of “significant portion of its range” that reflects a permissible reading of the law and minimizes undesirable policy outcomes, while fulfilling the conservation purposes of the Act. This final policy provides a consistent standard for interpretation of the phrase and its role in listing determinations.

DATES: This policy is effective on July 31, 2014.

EPA, [National Emission Standards for Hazardous Air Pollutants: Off-Site Waste and Recovery Operations](#)

Proposed rule. The Environmental Protection Agency (EPA) is proposing amendments to the national emission standards for hazardous air pollutants (NESHAP) for off-site waste and recovery operations (OSWRO) to address the results of the residual risk and technology review (RTR) conducted under the Clean Air Act (CAA). In light of our residual risk and technology review, EPA is proposing to amend the requirements for leak detection and repair and the requirements for certain tanks. In addition, the EPA is proposing amendments to revise regulatory provisions pertaining to emissions during periods of startup, shutdown and malfunction; add requirements for electronic reporting of performance test results; revise the routine maintenance provisions; clarify provisions pertaining to open-ended valves and lines; add monitoring requirements for pressure relief devices; clarify provisions for some performance test methods and procedures; and

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make several minor clarifications and corrections.

DATES: *Comments.* Comments must be received on or before August 18, 2014. A copy of comments on the information collection provisions should be submitted to the Office of Management and Budget (OMB) on or before August 1, 2014.

Public Hearing. EPA does not plan to conduct a public hearing unless requested. If requested, EPA will hold a public hearing on July 17, 2014.

EPA, Carbon Pollution Emission Guidelines for Existing Stationary Sources and Standards for Modified and Reconstructed Stationary Sources: EGUs

Proposed rule; notice of additional public hearings. The Environmental Protection Agency (EPA) published in the **Federal Register** on June 18, 2014, the proposed rules, “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units” and “Carbon Pollution Standards for Modified and Reconstructed Stationary Sources: Electric Utility Generating Units.” The EPA is announcing four additional public hearings, in addition to the previously announced dates on June 18, 2014.

DATES: *Comments on the proposed rules.* Comments must be received on or before October 16, 2014.

Because of the overwhelming response to the previously announced public hearings, the EPA will hold four additional public hearings. The following table outlines the updated public hearings schedule for the Carbon Pollution rules:
CARBON POLLUTION PUBLIC HEARINGS SCHEDULE

Atlanta, Georgia	July 29, 2014
.....	July 30, 2014.
Denver, Colorado	July 29, 2014
.....	July 30, 2014.
Washington, DC	July 30, 2014
.....	July 29, 2014.
Pittsburgh, Pennsylvania	July 31, 2014
.....	August 1, 2014.

OSHA, Respiratory Protection Standard; Extension of the Office of Management and Budget’s (OMB) Approval of Information Collection (Paperwork) Requirements

Request for public comments. OSHA solicits public comments concerning its proposal to extend OMB approval of the information collection requirements specified by the Respiratory Protection Standard (29 CFR 1910.134).

DATES: Comments must be submitted (postmarked, sent, or received) by September 8, 2014.

EPA, Notification of Two Public Teleconferences of the Science Advisory Board Panel for the Review of the EPA Water Body Connectivity Report

Notice: The EPA Science Advisory Board (SAB) Staff Office announces two public teleconferences of the SAB Panel to provide comments to the chartered SAB on the adequacy of the scientific and technical basis of the proposed rule titled *Definition of Waters of the United States under the Clean Water Act*.

DATES: The SAB Panel for the Review of the EPA Water Body Connectivity Report will conduct public teleconferences on August 20, 2014 and August 21, 2014. Each of the teleconferences will

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begin at 1:00 p.m. and end at 5:00 p.m. (Eastern Time).

Location: The public teleconferences will be conducted by telephone only.

EPA, [Notification of a Public Meeting of the Science Advisory Board Advisory Panel on EPA's Report on the Environment 2014](#)

Notice: The Environmental Protection Agency (EPA) Science Advisory Board (SAB) Staff Office announces a public meeting of the SAB Advisory Panel on EPA's Report on the Environment (ROE) 2014.

DATES: The SAB Advisory Panel on EPA's Report on the Environment 2014 public meeting will be held on Wednesday, July 30, 2014, from 9:00 a.m. to 5:00 p.m. Eastern Time and Thursday, July 31, 2014, from 8:30 a.m. to 4:00 p.m. Eastern Time.

EPA, [Hydraulic Fracturing Chemicals and Mixtures; Extension of Comment Period](#)

Advance notice of proposed rulemaking; extension of comment period. EPA issued an advance notice of proposed rulemaking in the **Federal Register** of May 19, 2014, concerning hydraulic fracturing chemicals and mixtures. This document extends the comment period for 30 days, from August 18, 2014, to September 18, 2014. EPA is taking this action in response to requests for an extension to allow interested persons additional time to submit comments.

DATES: Comments, identified by docket identification (ID) number EPA-HQ-OPPT-EPA-HQ-OPPT-2011-1019, must be received on or before September 18, 2014.

EPA, [Cross-Media Electronic Reporting: Authorized Program Revision Approval, Commonwealth of Kentucky](#)

Notice: This notice announces the Environmental Protection Agency (EPA's) approval of the Commonwealth of Kentucky's request to revise/modify certain of its EPA-authorized programs to allow electronic reporting.

DATES: EPA's approval is effective August 13, 2014 for the Commonwealth of Kentucky's National Primary Drinking Water Regulations Implementation program, if no timely request for a public hearing is received and accepted by the Agency, and on July 14, 2014 for the Commonwealth of Kentucky's other authorized programs addressed by this notice.

EPA, [Withdrawal of the Prior Determination or Presumption That Compliance With the CAIR or the NOX SIP Call Constitutes RACT or RACM for the 1997 8-Hour Ozone and 1997 Fine Particle NAAQS: Reopening of Public Comment Period](#)

Reopening of the public comment period. The Environmental Protection Agency (EPA) is announcing the reopening of the public comment period for its proposed rule titled, "Withdrawal of the Prior Determination or Presumption that Compliance with the CAIR or the NOX SIP Call Constitutes RACT or RACM for the 1997 8-Hour Ozone and 1997 Fine Particle NAAQS," which published in the **Federal Register** on June 9, 2014. The EPA has received a request to extend the comment period beyond July 9, 2014, and in response to that request, the EPA is reopening the comment period for an additional 30 days.

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DATES: Comments on the proposed rule published June 9, 2014 (79 FR 32892) must be received on or before August 14, 2014.

EPA, [Administrative Wage Garnishment](#)

Withdrawal of direct final rule. Due to the receipt of adverse comments, EPA is withdrawing the direct final rule for Administrative Wage Garnishment published in the **Federal Register** on July 2, 2014.

DATES: The direct final rule published at 79 FR 37644 on July 2, 2014 is withdrawn effective July 17, 2014.

EPA, [Administrative Wage Garnishment](#)

Proposed rule, extension of public comment period. The EPA is extending the period for providing comments on the proposed rule entitled, Administrative Wage Garnishment published in the **Federal Register** on July 2, 2014 to September 2, 2014.

DATES: Comments. The public comment period for the proposed rule published July 2, 2014, (79 FR 37704) is being extended to September 2, 2014 in order to provide the public additional time to submit comments and supporting information.

EPA, [Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills](#)

Advanced Notice of Proposed Rulemaking. The purpose of this Advanced Notice of Proposed Rulemaking (ANPRM) is to request public input on methods to reduce emissions from existing municipal solid waste (MSW) landfills. The Environmental Protection Agency (EPA) intends to consider the information received in response to the ANPRM in evaluating whether additional

changes beyond those in the proposed revisions for new sources are warranted. MSW landfill emissions are commonly referred to as “landfill gas” or “LFG” and contain methane, carbon dioxide (CO₂), and nonmethane organic compounds (NMOC). Some existing landfills are currently subject to control requirements in either the landfill new source performance standards (NSPS) or the federal or state plans implementing the landfill emission guidelines; both the NSPS and emission guidelines were promulgated in 1996. The EPA believes that these guidelines merit review to determine the potential for additional reductions in emissions of LFG. Such reductions would reduce air pollution and the resulting harm to public health and welfare. Significant changes have occurred in the landfill industry over time, including changes to the size and number of existing landfills, industry practices, and gas control methods and technologies. The ANPRM recognizes changes in the population of landfills and presents preliminary analysis regarding methods for reducing emissions of LFG. In determining whether changes to the emission guidelines are appropriate, the EPA will, in addition to evaluating the effectiveness of various methods for reducing emissions of LFG, consider the total methane emission reductions that can be achieved in addition to the reductions of NMOC emissions. The EPA is also seeking input on whether it should regulate methane directly. The ANPRM also addresses other regulatory issues including the definition of LFG treatment systems and requirements for closed areas of landfills, among other topics.

DATES: Comments. Comments must be received on or before September 15, 2014.

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EPA, Standards of Performance for Municipal Solid Waste Landfills

Proposed rule. The Environmental Protection Agency (EPA) is proposing a new subpart, 40 CFR part 60, subpart XXX that updates the Standards of Performance for Municipal Solid Waste Landfills. Under section 111 of the Clean Air Act, the EPA must review, and, if appropriate, revise standards of performance at least every 8 years. The EPA's review of the standards for municipal solid waste landfills applies to landfills that commence construction, reconstruction, or modification after July 17, 2014. The proposed standards reflect changes to the population of landfills and an analysis of the timing and methods for reducing emissions. The proposed standards also address other regulatory issues including the definition of landfill gas treatment systems, among other topics. The new subpart will reduce emissions of landfill gas, which contains both nonmethane organic compounds and methane. These avoided emissions will improve air quality and reduce public health and welfare effects associated with exposure to landfill gas emissions.

DATES: Comments. Comments must be received on or before September 15, 2014.

EPA, Oil and Natural Gas Sector: Reconsideration of Additional Provisions of New Source Performance Standards

Proposed rule; Notice of Public Hearing. On August 16, 2012, the Environmental Protection Agency (EPA) published final new source performance standards for the oil and natural gas sector. The Administrator received petitions for administrative reconsideration of certain

aspects of the standards. Among issues raised in the petitions were time-critical issues related to certain storage vessel provisions and well completion provisions. On September 23, 2013, the EPA published final amendments as a result of reconsideration of issues related to implementation of the storage vessel provisions. Following that action, the Administrator again received petitions for administrative reconsideration pertaining to the storage vessel provisions. In this notice, the EPA is announcing proposed amendments and clarifications as a result of reconsideration of certain issues related to well completions and additional issues pertaining to storage vessels. The proposed amendments also address other issues raised for reconsideration and make technical corrections and amendments to further clarify the rule.

DATES: Comments. Comments must be received on or before August 18, 2014, unless a public hearing is requested by July 22, 2014. If a hearing is requested on this proposed rule, written comments must be received by September 2, 2014.

Public Hearing. If anyone contacts the EPA requesting a public hearing by July 22, 2014 we will hold a public hearing on August 1, 2014.

EPA, RFS Renewable Identification Number (RIN) Quality Assurance Program

Final rule. Under the Renewable Fuel Standard (RFS) program, producers and importers of renewable fuel generate Renewable Identification Numbers (RINs) that are used by petroleum refiners and importers to demonstrate compliance with their renewable fuel volume obligations. Several cases of fraudulently generated RINs, however, led to

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inefficiencies and a significant reduction in the overall liquidity in the RIN market, resulting in greater difficulty for smaller renewable fuel producers to sell their RINs. Today's action finalizes additional regulatory provisions that are intended to assure reasonable oversight of RIN generation and promote greater liquidity in the RIN market, which in turn helps ensure the use of the required renewable fuel volumes. The rule includes a voluntary quality assurance program and related provisions intended to meet these goals. The program also includes elements designed to make it possible to verify the validity of RINs from the beginning of 2013. Additionally, we are finalizing a number of new regulatory provisions to ensure that RINs are retired for all renewable fuel that is exported and to address RINs that become invalid downstream of a renewable fuel producer.

DATES: The provisions of this regulatory action become effective September 16, 2014. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of September 16, 2014.

EPA, [Regulation of Fuels and Fuel Additives: RFS Pathways II, and Technical Amendments to the RFS Standards and E15 Misfueling Mitigation Requirement](#)

Final rule: In this final rulemaking, the Environmental Protection Agency (EPA) is amending three separate sets of regulations relating to fuels. In amendments to the renewable fuels standard (RFS) program regulations, EPA is clarifying the number of cellulosic biofuel renewable identification numbers that may be generated for fuel made

with feedstocks of varying cellulosic content, is specifying new and amended pathways for the production of renewable fuels made from biogas, and is clarifying or amending a number of RFS program regulations that define terms or address registration, recordkeeping, and reporting requirements. EPA is also making various changes to the misfueling mitigation regulations for gasoline that contains greater than 10 volume percent ethanol and no more than 15 volume percent ethanol (E15) and to the survey requirements associated with the ultra-low sulfur diesel program.

DATES: This rule is effective August 18, 2014.

EPA, [Approval and Promulgation of Implementation Plans; Commonwealth of Kentucky: New Source Review for Fine Particulate Matter \(PM2.5\)](#)

Proposed rule. The Environmental Protection Agency (EPA) is proposing to approve changes to the Kentucky State Implementation Plan (SIP), submitted by the Commonwealth of Kentucky, through the Kentucky Division for Air Quality (KDAQ) to EPA on January 31, 2013. The SIP revision modifies the Commonwealth's New Source Review (NSR), Prevention of Significant Deterioration (PSD), and Nonattainment New Source Review (NNSR) regulations to adopt into the Kentucky SIP Federal NSR permitting requirements for the implementation of the fine particulate matter (PM2.5) national ambient air quality standards (NAAQS). All of the changes in Kentucky's January 31, 2013 SIP submission are necessary to comply with Federal requirements. EPA is proposing approval of the Commonwealth's January 31, 2013 revision to the Kentucky SIP because the Agency has

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preliminarily determined that the changes are consistent with the Clean Air Act (CAA or Act). Additionally, EPA is proposing to convert two conditional approvals for SIP infrastructure requirements (related to Kentucky's permitting program) to full approval under the CAA.

DATES: Comments must be received on or before August 22, 2014.

[EPA, Information Collection Request Submitted to OMB for Review and Approval; Comment Request; Survey of the Public and Commercial Building Industry](#)

Notice. The Environmental Protection Agency (EPA) has submitted the following information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act (PRA): "Survey of the Public and Commercial Building Industry" and identified by EPA ICR No. 2494.01 and OMB Control No. 2070-NEW. The ICR, which is available in the docket along with other related materials, provides a detailed explanation of the collection activities and the burden estimate that is only briefly summarized in this document. EPA has addressed the comments received in response to the previously provided public review issued in the **Federal Register** on December 6, 2013 (78 FR 73520). With this submission, EPA is providing an additional 30 days for public review.

DATES: Comments may be received on or before August 29, 2014.

[EPA, Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112\(r\)\(7\)](#)

Request for information. The Environmental Protection Agency (EPA), in response to Executive Order 13650, requests comment on potential revisions to its Risk Management Program regulations and related programs. In this Request for Information (RFI), the Agency asks for information and data on specific regulatory elements and process safety management approaches, the public and environmental health and safety risks they address, and the costs and burdens they may entail. The EPA will use the information received in response to this RFI to inform what action, if any, it may take.

DATES: Comments and additional material must be received on or before October 29, 2014.

[EPA, Greenhouse Gas Reporting Program: Addition of Global Warming Potentials](#)

Proposed rule. The Environmental Protection Agency (EPA) is proposing to add chemical-specific and default global warming potentials (GWPs) for a number of fluorinated greenhouse gases (GHGs) and fluorinated heat transfer fluids (HTFs) to the general provisions of the Greenhouse Gas Reporting Rule. Currently, these fluorinated GHGs and HTFs are not assigned GWPs under the rule. The proposed changes would increase the completeness and accuracy of the carbon dioxide (CO₂)-equivalent emissions calculated and reported by suppliers and emitters of fluorinated GHGs and HTFs. In addition, the EPA is proposing conforming changes to the provisions for the Electronics Manufacturing and Fluorinated Gas Production source categories.

DATES: Comments must be received on or before September 2, 2014, unless a hearing is

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requested. If a hearing is requested, comments must be received on or before September 15, 2014.

Public Hearing. The EPA does not plan to conduct a public hearing unless requested. To request a hearing, please contact the person listed in the following **FOR FURTHER INFORMATION CONTACT** section by August 7, 2014. Upon such request, the EPA will hold the hearing on August 15, 2014, in the Washington, DC area. The EPA will provide further information about the hearing on the Greenhouse Gas Reporting Program Web site, <http://www.epa.gov/climatechange/emissions/ghgrulmaking.html> if a hearing is requested.

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