



## SMG Reg Watch

January 2015 / 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](mailto:scottr.smith@smithmanage.com).

### **QUESTIONS, COMMENTS, ADDITIONAL INFORMATION**

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### **Scott's Thoughts**

EPA amended the definition of "solid waste" on January 13. The [rule](#) modifies the 2008 definition of solid waste. The Administration claims that the new rule will result in resource conservation and economic benefits by encouraging certain types of in-process recycling and remanufacturing. Some recycling groups disagree. Only two criteria of proof on the legitimacy of the recycling operation were necessary under the old definition of solid waste, while proof of four criteria will be required under the amendments. There is also a public participation requirement for recyclers who seek to operate under a variance.

The part of the rule that stands to have the most widespread impact is the codification of mandatory legitimacy requirements and their extension to all recycling exemptions. Now all recycling occurring under any exclusion will be required to meet the four mandatory criteria. Anyone operating under a pre-2008 exclusion or exemption will require a case specific analysis of the recycling activity.

The [coal combustion residual rule](#) was approved by EPA in December. To their credit, EPA decided that the material was a non-hazardous waste but every reasonable person already knew that. The rule establishes location restrictions, design criteria which includes structural integrity criteria and operating criteria. If you can't meet the location restrictions or design criteria you could be forced to close the unit, if it is an existing unit or preclude initial acceptance of CCR material at a new unit. Another requirement is for all existing and new CCR landfills and surface impoundments to establish and implement a groundwater monitoring program. It appears that the Kentucky Division of Solid Waste will be the agency to oversee the implementation of this new rule.

Keep an eye on the November [EPA proposal](#) to revise the NAAQS for ozone. [This issue](#) is THE NEXT BIG THING! The agency recommended a standard between 65 to 70 parts per billion. The question is whether a 60 ppb standard should be established or whether the existing 75 ppb standard should be retained. Governor Beshear sent a letter to President Obama indicating if a 60 ppb standard is chosen all 29 of Kentucky's air monitors would exceed the standard. There are substantial costs

associated with this proposed rule. The National Association of Manufacturers estimates the rule will cost \$270B. The rule applies to ground level ozone. Sources that can affect this include cars, power plants, and manufacturing plants and oil and natural gas refineries. Nature has a play in this also sources such as wildfires, and intrusions of ozone from the stratosphere. Expect the Congress to hopefully push back. EPA's target to finalize the rule is October 2015.

Keep your eye on EPA making a move on pharmaceuticals. They released a [report](#) in September about potential pharmaceutical concentrations in wastewater. The report states that researchers estimated that risks were low for both healthy adults and aquatic life. Regardless of these findings, EPA plans to propose a notice of proposed rulemaking in June 2015. Until the new rules are finalized healthcare facilities and other business entities must manage these wastes in accordance with the RCRA Subtitle C generator requirements.

There is fun to be had watching Congress deal with some of the Obama Administration's environmental exceedances. The Keystone Pipeline was the first energy issue out of the gate. Watch for the Senate to focus on broad energy package centering on four areas: strengthening supply, modernizing infrastructure, supporting efficiency and ensuring federal accountability. Expect the Senate to specifically focus on a multi-year highway bill, aggressive oversight of EPA regulations, an examination of the Endangered Species Act and reform of the Toxic Substances Control Act. S.66 is interesting because it

prohibits the US from regulating CO2 unless China, Russia and India have similar regulations.

In addition to the topics discussed above, SMG provides brief blog updates several times each week. Blogs are written by SMG employees, and can be found on our website. SMG Blog Entries of Note for this month are hyperlinked below:

[APCD Upcoming Regulatory Changes](#)

[USFWS Alters Course on Bat Listing](#)

[Sierra Club Sues to have EPA take over Enforcement of Clean Water Act](#)

[EPA Announces New Federal Regulations for Disposal of Coal Ash from Coal-Fired Power Plants](#)

[Pretreatment Program - Definition and Need for Pretreatment](#)

[It's Final: EPA Updates to the New Source Performance Standard \(40 CFR 60 Subpart 0000\) for Crude Oil and Natural Gas Industry](#)

[New Year, New OSHA Recordkeeping and Reporting Rules](#)

[Buying or Leasing Commercial Property - What are the environmental questions to ask before you buy, sell or borrow?](#)

[CBT Recycling: Turn your old school television into sand](#)

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### [New Federal Regulations for Disposal of Coal Ash are Announced](#)

### [Climate Change Analysis Added to the NEPA Process](#)

### [State Regulation Review](#)

The following are Proposed Amendments that are being addressed by the Administrative Regulation Review Subcommittee:

No items of interest.

### [Federal Regulation Review](#)

#### [EPA, National Ambient Air Quality Standards for Lead](#)

**Proposed Rule:** Based on the Environmental Protection Agency's (EPA's) review of the air quality criteria and the National Ambient Air Quality Standards (NAAQS) for lead (Pb), the EPA is proposing to retain the current standards, without revision.

**DATES:** Comments must be received on or before April 6, 2015. *Public Hearings:* If, by January 26, 2015, the EPA receives a request from a member of the public to speak at a public hearing concerning the proposed decision, we will hold a public hearing, with information about the hearing provided in a subsequent notice in the **Federal Register**.

#### [EPA, Definition of Solid Waste](#)

**Final Rule.** The Environmental Protection Agency (EPA, or the Agency) is publishing a final rule that revises several recycling-related provisions associated with the definition of

solid waste used to determine hazardous waste regulation under Subtitle C of the Resource Conservation and Recovery Act (RCRA). The purpose of these revisions is to ensure that the hazardous secondary materials recycling regulations, as implemented, encourage reclamation in a way that does not result in increased risk to human health and the environment from discarded hazardous secondary material.

**DATES:** This final rule is effective on July 13, 2015.

#### [EPA, Air Quality Designations for the 2012 Primary Annual Fine Particle \(PM2.5\) National Ambient Air Quality Standards \(NAAQS\)](#)

**Final Rule:** This rule establishes air quality designations for most areas in the United States (U.S.), including areas of Indian country, for the 2012 primary annual fine particle (PM2.5) National Ambient Air Quality Standards (NAAQS). Through these designations, the Environmental Protection Agency (EPA) is identifying as "nonattainment" those areas that are violating the 2012 PM2.5 NAAQS based on quality-assured, certified air quality monitoring data from 2011 to 2013 or those areas that are contributing to a violation of the NAAQS in a nearby area. The EPA is initially classifying all nonattainment areas as Moderate. Also, through this final rule, the EPA is designating several areas as "unclassifiable" where the EPA cannot determine based on available information whether the area is meeting or not meeting the NAAQS or where the EPA has not determined whether the area contributes to a nearby violation. Additionally, the EPA is deferring initial area designations for several

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areas where the EPA cannot determine using available data whether the areas are meeting or are not meeting the NAAQS, but for which forthcoming data will likely result in complete and valid data needed to determine a designation. The EPA will assess these data as they become available and promulgate initial area designations for the deferred areas through a separate rulemaking action. The EPA is designating as “unclassifiable/attainment” all remaining areas of the country.

**DATES:** The effective date of this rule is April 15, 2015.

**EPA, [Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence](#)**

**Notice of availability:** The U.S. Environmental Protection Agency (EPA) is announcing the availability of the final report titled, “Connectivity of Streams and Wetlands to Downstream Waters: A Review and Synthesis of the Scientific Evidence” (EPA/600/R-14/475F). The purpose of this report is to summarize the current understanding about the connectivity and mechanisms by which streams and wetlands affect the physical, chemical, and biological integrity of downstream waters. The report is available via the Internet on the EPA Office of Research and Development (ORD), National Center for Environmental Assessment’s Web site ([www.epa.gov/ncea](http://www.epa.gov/ncea)) under the Recent Additions and Publications menu.

**DATES:** The Agency is releasing the report publicly on January 15, 2015.

**Fish and Wildlife Service, [Endangered and Threatened Wildlife and Plants: Listing the](#)**

**Northern Long-Eared Bat With a Rule Under Section 4(d) of the Act**

**Proposed rule and reopening of comment period.** The U.S. Fish and Wildlife Service (Service), proposes to create a species-specific rule under authority of section 4(d) of the Endangered Species Act of 1973, as amended (Act), that provides measures that are necessary and advisable to provide for the conservation of the Northern long-eared bat (*Myotis Septentrionalis*), should the Service determine this species warrants listing as a threatened species under the Act. In addition, the Service announces the reopening of the public comment period on the October 2, 2013, proposed rule to list the northern long-eared bat as an endangered species under the Act.

**DATES:** The Service will accept comments received or postmarked on or before March 17, 2015. Comments submitted electronically using the Federal eRulemaking Portal (see **ADDRESSES**, below) must be received by 11:59 p.m. Eastern Time on the closing date.

**EPA, [National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers](#)**

**Proposed rule; request for public comment.** On February 1, 2013, the Environmental Protection Agency (EPA) finalized amendments to the National Emission Standards for Hazardous Air Pollutants for Area Sources: Industrial, Commercial, and Institutional Boilers (Area Source Boilers Rule). Subsequently, the EPA received three petitions for reconsideration of the final rule. The EPA is announcing reconsideration of and requesting public

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comment on five issues raised in the petitions for reconsideration, as detailed in the **SUPPLEMENTARY INFORMATION** section of this document. In this action, the EPA is also proposing a limited number of technical corrections and amendments to the final rule to correct inadvertent errors and to clarify some applicability and implementation issues raised by stakeholders subject to the final rule. Also, we propose to delete rule provisions for an affirmative defense for malfunction in light of a recent court decision on the issue. The EPA is seeking comment only on the five issues being reconsidered, the proposed deletion of the affirmative defense and on the technical corrections and amendments described in the preceding paragraph. The EPA will not respond to any comments addressing any other issues or any other provisions of the final rule.

**DATES:** *Comments.* Comments must be received on or before March 9, 2015, or 30 days after date of public hearing, if later.

*Public Hearing.* If anyone contacts us requesting to speak at a public hearing by January 26, 2015, a public hearing will be held on February 5, 2015. If you are interested in attending the public hearing, contact Ms. Pamela Garrett at (919) 541-7966 to verify that a hearing will be held.

**EPA, [National Emission Standards for Hazardous Air Pollutants for Major Sources: Industrial, Commercial, and Institutional Boilers and Process Heaters](#)**

**Proposed rule:** On January 31, 2013, the Environmental Protection Agency (EPA) finalized amendments to the national emission standards for the control of Hazardous Air Pollutants (HAP) from new and

existing industrial, commercial, and institutional boilers and process heaters at major sources of HAP. Subsequently, the EPA received 10 petitions for reconsideration of the final rule. The EPA is announcing reconsideration of and requesting public comment on three issues raised in the petitions for reconsideration, as detailed in the **SUPPLEMENTARY INFORMATION** section of this notice. The EPA is seeking comment only on these three issues. The EPA will not respond to any comments addressing any other issues or any other provisions of the final rule. Additionally, the EPA is proposing amendments and technical corrections to the final rule to clarify definitions, references, applicability and compliance issues raised by stakeholders subject to the final rule. Also, we propose to delete rule provisions for an affirmative defense for malfunction in light of a recent court decision on the issue.

**DATES:** *Comments.* Comments must be received on or before March 9, 2015, or 30 days after date of public hearing if later. *Public Hearing.* If anyone contacts us requesting to speak at a public hearing by January 26, 2015, a public hearing will be held on February 5, 2015. If you are interested in attending the public hearing, contact Ms. Pamela Garrett at (919) 541-7966 or by email at [garrett.pamela@epa.gov](mailto:garrett.pamela@epa.gov) to verify that a hearing will be held.

**EPA, [Standards of Performance for New Stationary Sources and Emission Guidelines for Existing Sources: Commercial and Industrial Solid Waste Incineration Units](#)**

**Proposed rule:** On February 7, 2013, the Environmental Protection Agency (EPA)

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promulgated its final response to petitions for reconsideration of the final New Source Performance Standards (NSPS) and Emission Guidelines (EG) for Commercial and Industrial Solid Waste Incineration (CISWI) units that were promulgated on March 21, 2011. Following promulgation of the February 2013 final action, the Administrator received petitions for reconsideration that identified issues that petitioners maintain require additional reconsideration and/or warrant further opportunity for public comment. In this action, the EPA is granting reconsideration on four provisions of the February 2013 final NSPS and EG for CISWI units. In addition, the EPA identified regulatory provisions that require clarification and editorial correction to address inconsistencies and errors in the final rules. The proposed amendments provide additional clarity and improve the implementation of the February 2013 final CISWI standards, but do not have any environmental, energy or economic impacts associated with the proposed action.

**DATES:** *Comments.* Comments must be received on or before March 9, 2015, or 30 days after date of public hearing, if later.

*Public Hearing.* If anyone contacts us requesting to speak at a public hearing by January 26, 2015, a public hearing will be held on February 5, 2015. If you are interested in attending the public hearing, contact Ms. Virginia Hunt at (919) 541-0832 to verify that a hearing will be held.

**EPA, [National Oil and Hazardous Substances Pollution Contingency Plan](#) Proposed rule.** The Environmental Protection Agency (EPA or the Agency)

proposes to amend the requirements in Subpart J of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP) that govern the use of dispersants, other chemical and biological agents, and other spill mitigating substances when responding to oil discharges into waters of the United States (U.S.). The proposal addresses the efficacy, toxicity, environmental monitoring of dispersants, and other chemical and biological agents, as well as public, state, local, and federal officials' concerns regarding their use. Specifically, the proposal amends the Subpart J regulatory requirements for the NCP Product Schedule (Schedule) by adding new listing criteria, revising the efficacy and toxicity testing protocols, and clarifying the evaluation criteria for removing products from the Schedule. The Agency also proposes amended requirements for the authorities, notifications, monitoring, and data reporting when using chemical or biological agents in response to oil discharges to the navigable waters of the United States and adjoining shorelines, the waters of the contiguous zone, and the high seas beyond the contiguous zone in connection with activities under the Outer Continental Shelf Lands Act, activities under the Deepwater Port Act of 1974, or activities that may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States, including resources under the Magnuson Fishery Conservation and Management Act of 1976. These requirements are anticipated to encourage the development of safer and more effective spill mitigating products, and would better target the use of these products to reduce the risks to human health and the environment. Further, the amendments are

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intended to ensure that On-Scene Coordinators (OSCs), Regional Response Teams (RRTs), and Area Committees have sufficient information to support agent preauthorization or authorization of use decisions.

**DATES:** Comments must be received on or before April 22, 2015.

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