Legislative, Regulatory & Policy Update – Frankfort and DC

SPEAKER
Scott R. Smith

DATE
April 21, 2017
Environmental Changes 2017- Why Did We Get Here?

- Regulatory compliance & economic impacts of federal intervention of $1.885 trillion annually.

  The Weidenbaum Center & Regulatory Studies Center jointly estimate that agencies spent $63 billion in 2015 to administer and police the regulatory enterprise.

  If it were a country, US Regulation would be the ninth largest economy, ranking behind India and ahead of Russia.
US regulatory costs fall between the gross domestic products of Canada and the United Kingdom.

In 2015, 114 laws were enacted by Congress while 3,410 rules were issued by agencies.
We are currently asking

Who’s on first
What’s on second
I don’t know is on third
The Breakdown

Federal Level

- Executive Orders
- Congressional Over Rides
- Regulations

State Level

- Legislative Initiatives
- Administrative Initiatives
SMG’s SUGGESTIONS TO THE ADMINISTRATION
Non-Regulatory, Programmatic Influences

- MOU/MOA Impact
- Guidance Documents
- Federal Oversight on Permits, Regulations & State Implementation Plans (SIPs)
- Federal Funding of State Environmental Permitting

Suggestions To Establish Priorities
SMG’s Input To Regulatory Input Request

Specific Issues, Programs & Regulatory Actions

- Ambient Air Standards
- Implementation of NAAQS and NSR Permitting
- NSPS for VOCs
- Waters of US
- Corps In Lieu Fee Program
- More
FEDERAL LEVEL CHANGES
Federal Level Executive Orders

Frozen Regulations-January 20

Reducing Regulations-January 30
- Propose 1/Repeal 2
- Determine costs for new regulations and repealed regulations

Dismantle Climate Change Initiatives
- Rescinded four of Obama's executive actions, two of his reports, and told the Environmental Protection Agency to review the Clean Power Plan.
Federal Level Executive Orders

- Review Waters of US Rule

Enforce Regulatory Reform
  - Regulatory Reform Officers within each federal agency

Expediting Environmental Review for Infrastructure Projects

Reduce Regulations On Manufacturing
Delayeď Until March 21, 2017 - 30 Regulations

• Kentucky UIC Program Primacy Approval - Subsequently Approved
• Air Plan Approval Louisville PM 2.5
• Revisions to the Guideline on Air Quality Models - Enhancements to AERMOD Dispersion Modeling System
• Accidental release prevention requirements
The CRA allows Congress to overturn rules by a federal agency within 60 days after they are reported to Congress. It was aimed at rules made by “lame duck” presidents.

Two factors make the CRA particularly powerful.

• It provides that a regulation, once repealed, cannot be promulgated again without a new act of Congress.
• The Obama administration failed to report many rules to Congress — meaning the 60-day window never began even for some earlier Obama rules.

The window for repealing rules from the last several months of Obama’s presidency closes in May-maybe.
Congressional Review Act Current Actions—About a Dozen

**Coal mining**: Ended the “Stream Protection Rule,” a Department of the Interior rule that hurt coal.

**Injury paperwork**: Nullified a Department of Labor rule requiring more records of worker injuries.

**Drug testing for unemployment**: Overturned a Department of Labor regulation that had restricted the use of drug testing to determine workers’ eligibility to receive unemployment compensation.

More to come.
President’s/Governor’s budgets are politely considered but...

Watch budget committees in the House

House Committee on Appropriations with subcommittees for specific cabinets

Subcommittee on Interior and Environment
New Nationwide Permits took effect March 19, 2017

Significant modifications

- NWP 12 Utility Line Activities
- NWP 13 Bank Stabilization
- NWP 21 Surface Coal Mining
Army Corps of Engineers Nationwide Permit-General Conditions

Significant updates to certain General Conditions

- GC 18 Endangered Species
- CG 19 Migratory Birds & Bald Eagles
- GC 23 Mitigation
- GC 32 Pre-Construction Notification
States can make permit provisions more restrictive

Kentucky DOW changes include a requirement to obtain an Individual WQC if the proposed project will create in-stream stormwater detention or retention basins, even if the project would otherwise meet the conditions of the General WQC.
KENTUCKY’S OUTLOOK
Kentucky Changes

New Republican Administration

State House flip to Republican control

Enables economic, labor and other initiatives never before considered to get approval

Red Tape Reduction
Energy & Environment Cabinet Reorg SB 249

• Eliminates state noise emission prohibitions, including:
  – the certification of products,
  – granting of noise variances, and
  – requirements for noise control plans.
Two noise statutes were left intact;

- KRS 224.30-175 which allows local communities to regulate the issue; and

- KRS 224.30-190 Motor Vehicle Noise.
Kentucky Regional Integrated Waste Treatment and Disposal Facility Siting Board has been eliminated.

Environmental Quality Commission has been eliminated.

The Environmental Trust Fund has been eliminated.

The Small Coal Operators Advisory Council has been eliminated.

Advisory Committee for Agricultural Chemical and Chemical Container Disposal Program, has been eliminated.
Energy & Environment Reorganization SB 249

KRS 151.293 (14). The ability of the owner of a dam who has requested a variance has been simplified.

KRS 152.713. The Center for Renewable Energy Research and Environmental Stewardship at the University of Louisville’s attachment to the Energy and Environment Cabinet has ended.

KRS 224.70-120 (20). The Cabinet will no longer accept a 20% application filing fee for KPDES permits. Full fee due at application.

KRS 224.73-110 (25). Individual households will no longer have to be certified by the Cabinet for sewage system operation at their residence.
House Bill 50 Sunset Administrative Regulations

- Requires the Administrative Regulations Complier to maintain a list of all administrative regulation numbers and the corresponding last effective date.

  Ordinary administrative regulations with a last effective date on or after July 1, 2012 shall expire seven years after its last effective date.

  An ordinary administrative regulation with a last effective date before July 1, 2012 shall expire on July 1, 2019.
The regulations compiler shall

- Delete regulations that expire from the Kentucky Administrative Regulations Service, and add them to the list of ineffective administrative regulations.

- Beginning on January 1, 2020 and at least once every six months, publish a list of administrative regulations that have expired since the most recent previous list was published.
Kentucky Regulatory/Administrative Front-What’s Coming

- NORM/TNORM - New Regulations
- SB 249 Cleanup - New Regulations
- New Solid Waste Regulations
- New Hazardous Waste Regulations Reduced from 150 to Less than 10
Kentucky Regulatory/Administrative Front-What’s Coming

Some Reg changes will reference federal register

Water - Sub Metering – Currently in Public Comment

Role of Division of Oil & Gas

Water Resource Areas Will Be Reviewed - Examples - Flood Plain Issues/Water Withdrawal
THANK YOU
from Smith Management Group

Scott.smith@smithmanage.com 859-231-8936 ext.116
www.smithmanage.com

LEXINGTON  |  LOUISVILLE
859-231-8936  |  502-587-6482