



## CRWI Update April 30, 2017

### MEMBER COMPANIES

Clean Harbors Environmental Services  
Dow Chemical U.S.A.  
E. I. Du Pont de Nemours  
Eastman Chemical Company  
Heritage Thermal Services  
INVISTA S.à.r.l.  
3M  
Ross Incineration Services, Inc.  
Veolia ES Technical Services, LLC

### GENERATOR MEMBERS

Eli Lilly and Company

### ASSOCIATE MEMBERS

AECOM  
Alliance Source Testing LLC  
Amec Foster Wheeler PLC  
B3 Systems  
Coterie Environmental, LLC  
Focus Environmental, Inc.  
Franklin Engineering Group, Inc.  
METCO Environmental, Inc.  
O'Brien & Gere  
SGS North America, Inc.  
Strata-G, LLC  
SYA/Trinity Consultants  
TestAmerica Laboratories, Inc.  
TRC Environmental Corporation

### INDIVIDUAL MEMBERS

Ronald E. Bastian, PE  
Ronald O. Kagel, PhD

### ACADEMIC MEMBERS

(Includes faculty from:)

Clarkson University  
Colorado School of Mines  
Lamar University  
Louisiana State University  
Mississippi State University  
New Jersey Institute of Technology  
University of California – Berkeley  
University of Dayton  
University of Kentucky  
University of Maryland  
University of Utah

### Boiler litigation

On April 27, 2017, The Pacific Legal Foundation, the Competitive Enterprise Institute, and the National Federation of Independent Businesses filed an amicus brief urging the Supreme Court to grant American Municipal Power's petition to the Supreme Court to review the Appeals Court decision on malfunctions. The amicus brief argues that the policy of requiring facilities to meet emission limitations during malfunctions is unlawful because it sets an unachievable requirement that facilities never exceed emission limits.

A date for oral arguments for the second reconsideration boiler rule litigation has not been set.

### SSM SIP call litigation

On April 18, 2017, EPA and the Department of Justice asked the U.S. Court of Appeals for the District of Columbia Circuit to stay the litigation on the Agency's rule that requires states to remove language in their state implementation plans (SIP) allowing facilities to avoid meeting emissions standards during startup, shutdown, and malfunction periods. The reason stated for the request is that the Agency plans to review the rule promulgated by the previous administration and may wish to make changes. If they do so, the rule under litigation no longer becomes a final action and the court should wait for a final action before ruling. Only one state involved in the litigation opposed the motion. Delaware argued that briefing was completed and the court should hear oral arguments. Environmental groups also opposed the motion. On April 24, 2017, the court granted the motion, postponing the oral arguments indefinitely. The Department of Justice has to submit reports on the progress of the new rulemaking every 90 days.

It is not unusual for a new administration to ask the court to stay litigations on the previous administration's regulations. Each new administration wants time to decide whether to defend the previous administration's rules or whether those rules need revision. What is unusual is the number of times this administration has asked for litigations to be held in abeyance.

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This may be because of the large number of regulations promulgated in the later part of the previous administration.

### **Regulatory reform meetings**

On February 24, 2017, President Trump signed Executive Order 13777, instructing all federal agencies to reduce the regulatory burden. On March 24, 2017, EPA Administrator Pruitt sent a memo to the heads of seven offices asking for a list of recommendations by May 15, 2017. He also told the office heads to hold a public meeting to solicit input from stakeholders. On April 24, 2017, EPA's Office of Air and Radiation (OAR) held a 3-hour conference call yesterday to solicit input from the public on how to respond. Each caller was given 3 minutes. Callers were taken on a first come, first serve basis. There were a total of 66 callers. In general, there were two main groups that requested time. There were 22 callers from industry or industry groups that suggested specific regulations or guidance documents that should be revised or rescinded. There were 30 callers from private citizens or environmental groups that opposed the repeal of any regulations, especially the greenhouse gas emission regulations. The other callers represented Indian tribes, scientists, and private citizens, etc. Only one state (Connecticut) made a presentation. One caller was employed by North Carolina but stated that the views were his own and not that of the State of North Carolina.

Two callers suggested additional regulations. American Forest and Paper Association asked EPA to propose a rule within the next 6 months that would revise the remanded boiler MACT standards. An aviation company asked EPA to adopt the international greenhouse gas restrictions for airplanes.

Because of the way the conference call was organized, it may not reflect a cross section of what changes industry will request. However, it is likely that the responses given by the environmental groups are representative.

The Office of Land and Emergency Management is holding their public meeting on May 9, 2017 (9:00 am – 5:00 pm) in Arlington, VA. The deadline for submitting suggestions is May 15, 2017.

### **SW-846 proposed update**

On April 28, 2017, EPA's Office of Resource Conservation and Recovery continued their method of announcing proposed updates to SW-846 methods using an email list instead of a *Federal Register* notice. The overall process for developing comments remains the same, except that initial notice is by email and their SW-846 web page (<https://www.epa.gov/hw-sw846>). This proposed update contains two methods (8260D and 8270E) for the analysis of volatile and semi-volatile organic compounds in solid waste and other environmental media using gas chromatography and mass spectrometry. Comments will be accepted until June 28, 2017. Additional information can be found on the website.

## **Rumor to close Region 5**

In March, the Office of Management and Budget asked EPA for plans to reduce the number of regional offices from ten to eight. On April 15, 2017, the Chicago Sun-Times reported that EPA Region 5 would be consolidated with Region 7, closing the Chicago office. Acting Regional Administrator Robert Kaplan sent an email to Region 5 staff on April 17, 2017, saying this story is not true. EPA Headquarters responded that there are no firm plans to close any particular office. Despite these reassurances, the local American Federation of Government Employees union chapter is taking the rumor seriously and is trying to build public and Congressional opposition to any changes in Region 5 or EPA's overall budget.

## **Congress**

Congress failed in their initial attempt to revise the Affordable Care Act. There are currently mixed signals on what they want to do next. Some are working to revive the Affordable Care Act reforms, while others want to go on to tax reform. However, their plate is quickly getting full. The current appropriations for FY 2017 ended on April 28, 2017. On that day, Congress passed another continuing resolution extending funding until May 5, 2017. President Trump signed that bill funding the government for another week. Congress continued to work over the weekend and came to an agreement on a bill funding the government for the rest of fiscal year 2017. However, this appropriations bill does not include some of the provisions requested by the President. It still has to be passed by both Houses of Congress and signed by the President. In addition, the suspension of the debt ceiling expired on March 15, 2017, and the US debt is already above the current ceiling. Thus, the Treasury cannot borrow any more money until that ceiling is again suspended or lifted. They also need to start the FY 2018 appropriations process.

The Senate changed the rules and confirmed Neil Gorsuch as a Supreme Court judge. This restores the 5-4 conservative makeup of the court. He sat on his first case on April 17, 2017. With this Senate rule change, all political nominations from the president, including Supreme Court justices now only require a majority vote. The minority will no longer be able to filibuster Supreme Court nominees. This change could have significant ramifications for future Supreme Court openings.

President Trump has signed Congressional Review Act (CRA) resolutions of disapproval repealing 13 rules promulgated by the Obama Administration. None of these are for EPA rules. There have been no actions on the three EPA rule CRAs (risk management plan rule, cross state pollution rule, and Utah state plan). Several other resolutions of disapproval have been introduced. Congress is required to act on each within 60 legislative days. This deadline is May 9, 2017.

## EPA

There have been no nominations of second tier EPA administrators. However, EPA Administrator Pruitt has started staffing the various offices with Schedule C political appointees. These do not require Senate confirmation. The trade press is reporting that Susan Bodine is being considered for the Deputy Administrator slot. Ms. Bodine was the Assistant Administrator for the Office of Solid Waste and Emergency Response under the second Bush Administration and is currently the Chief Counsel for the Senate Environment and Public Works Committee. The other name that has been mentioned is Andrew Wheeler, former staff director for the Environment and Public Works Committee.

EPA continues the process of reviewing rules promulgated by the previous administration. Since April 1, 2017, the Agency has published several *Federal Register* notices withdrawing or changing a number of rules. These include:

- April 3 – withdrawing the proposed Federal Implementation Plan for greenhouse gas emission guidelines for existing fossil-fuel electric generating plants;
- April 3 – proposing to extend the effective date for the risk management plan final rule until February 19, 2019, to allow time to review the rule;
- April 4 – announcing it will be reviewing the 2016 oil and gas New Source Performance Standards and if appropriate will initiate reconsideration proceedings to suspend, revise, or rescind the rule; Administrator Pruitt sent an April 18, 2017, letter granting reconsideration and notifying the petitioners of the intent to extend the compliance date for 90 days;
- April 4 – announcing it would review and if appropriate, suspend, revise, or rescind the Clean Power Plan rule; and
- April 4 – announcing it would review and if appropriate, will initiate proceedings to suspend, revise, or rescind the standards of performance for greenhouse gases for new electric generation units.

Meanwhile, EPA Administrator Pruitt made several public appearances (coal mines, coal-burning EGUs, lead Superfund site in Chicago) to push EPA's "Back-to-Basics" agenda. The "Back-to-Basics" Agenda includes:

- Following the President's Energy Independence Executive Order;
- Restoring states' role in the regulation of local waters by reviewing the waters of the US rule;
- Clearing the backlog of new chemicals that were waiting approval from EPA;
- Helping states achieve high air quality targets, clean up toxic waste sites, and improve America's water infrastructure;
- Modification or rescinding several greenhouse gas emissions rules; and
- Launched the EPA Regulatory Reform Task Force to undergo extensive reviews of previous regulatory actions.

Finally, on April 12, 2017, the Office of Management and Budget sent a memo to all agencies giving guidance on how to implement a comprehensive plan for reforming the federal government and reducing the workforce. Based on this memo, EPA Acting Deputy Administrator Michael Flynn sent a memo (April 17, 2017) to the Agency's senior management instructing them that the current hiring freeze would continue and that each office should begin the process of work force reductions. The goal is to achieve the reductions by the end of fiscal year 2017. It remains unclear if this is the only mechanism the administration will use to reduce EPA's work force from the current levels of approximately 15,000 full-time equivalents to the 11,500 as outlined in EPA fiscal year 2018 draft budget.

### **EPA budget**

On March 21, 2017, the EPA Acting Chief Financial Officer sent a memo to senior management outlining how the Agency should develop their budget to meet the administration's goal of a \$5.655 billion budget and a full-time equivalent (FTE) ceiling of 11,547.6. This memo tells each program office how to cut their budget to meet these goals. For example, the memo eliminates a climate protection program within the Office of Air and Radiation, reducing the budget by \$67 million and eliminating 168 FTEs. This is just one of several climate change programs eliminated. In the Office of Land and Emergency Management, the leaking underground storage tank program will lose \$2.5 million and 35 FTEs while the grants programs to the states will lose \$25 million. The Superfund program would lose \$29 million and 19 FTEs. This memo contains a detailed look at which programs will be impacted and by how much. A copy of this can be obtained from CRWI.

### **Citizen science**

On April 18, 2017, EPA published a notice of a public meeting of the National Advisory Council for Environmental Policy to develop the framework for how to best integrate citizen science into the Agency's policy and rulemaking activities. The meeting will be held in Raleigh, NC on May 10-11, 2017. Additional information can be found in the *Federal Register* notice.

### **CRWI meeting**

The next CRWI meeting will be held on May 17-18, 2017, in Tulsa, OK. It will feature a tour of Zeeco. For additional information, contact CRWI (mel@crwi.org or 703-431-7343).