



## CRWI Update April 30, 2019

### MEMBER COMPANIES

Clean Harbors Environmental Services  
Eastman Chemical Company  
Heritage Thermal Services  
INVISTA S.à.r.l.  
3M  
Ross Incineration Services, Inc.  
The Dow Chemical Company  
Veolia ES Technical Services, LLC

### GENERATOR MEMBERS

Eli Lilly and Company  
Formosa Plastics Corporation, USA

### ASSOCIATE MEMBERS

AECOM  
Alliance Source Testing LLC  
B3 Systems  
Civil & Environmental Consultants, Inc.  
Coterie Environmental, LLC  
Focus Environmental, Inc.  
Franklin Engineering Group, Inc.  
METCO Environmental, Inc.  
Montrose Environmental Group, Inc.  
O'Brien & Gere  
Spectrum Environmental Solutions LLC  
Strata-G, LLC  
SYA/Trinity Consultants  
TestAmerica Laboratories, Inc.  
TRC Environmental Corporation  
W. L. Gore and Associates, Inc.  
Wood, PLC

### 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

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### PFAS interim guidance

On April 25, 2019, EPA released their draft interim recommendations on groundwater contamination from perfluorooctanoic acid (PFOA) and perfluorooctane sulfonate (PFOS). The guidance contains three recommendations. The first is to use a screening level hazard quotient (HQ) of 0.1 for PFOA or PFOS individually. This is equivalent to 40 ppt. Screening levels are designed to eliminate facilities where additional investigation is not needed. This follows EPA traditional guidelines for non-cancer effects where an HQ of 1.0 is used when only one contaminant is present and 0.1 is used where multiple contaminants are present. EPA explains that an HQ of 0.1 is recommended because of the toxicity of PFOA and PFOS is additive, and the possible presence of other toxic PFAS compounds. The second recommendation is to set preliminary remediation goals at 70 ppt for each compound for groundwater that is a current or potential source of drinking water. This level is for sites where no maximum contaminant level has already been established by state, tribal, or other applicable or relevant and appropriate requirements. If both compounds are present, EPA recommends a 70 ppt goal for the combined concentrations. The third recommendation is that the Agency expects the responsible parties to address any levels of PFOA and/or PFOS over 70 ppt. Comments will be accepted until June 10, 2019.

### CISWI final rule

On April 16, 2019, EPA published a final rule making several amendments to the Commercial and Industrial Solid Waste Incinerator (CISWI) regulations. Some of the changes are listed below.

- Allowing the use of mercury emission limits normalized to lbs/MM ton of clinker for the waste burning kiln category. Facilities in this source category can now comply with either concentration based limits (mg/dscm) or production based limits (lbs/million tons of clinker).

- Extended the time to conduct performance evaluations for each continuous monitoring system so this can be synchronized with initial performance testing.
- Require electronic reporting of initial, annual, and deviation reports starting April 16, 2021, or one year after the forms are available in Compliance and Emissions Data Reporting Interface (CEDRI), whichever is later.
- Clarified what decisions were not delegated.
- Clarified that continuous emission monitors (CEMs) are allowed to show initial and continuous compliance and that if a CEMs is used, the facility does not need to monitor associated operating parameters unless those parameters are used to show compliance with another regulated pollutant.
- Adds energy recovery units that used electrostatic precipitators and particulate matter continuous parameter monitoring systems to the exclusion of the requirement to install and operate continuous opacity monitors.
- Clarified that skipping of annual testing can be used as long as the facility meets the requirements. A facility is required to test the first and second years. If they are below 75% of the applicable standards for both years, they can skip testing for years three and four. They must test again in year five. If they continue to be below the 75% threshold, they can skip testing for years six and seven. Facilities are allowed to continue this sequence for as long as they meet the criterion. However, if any test exceeds the 75% threshold, they must restart the two year process.
- Adding language to require that deviations from operating limits and CEMs measurements must be included in a deviation report.
- Clarified that an air curtain incinerator unit is not a CISWI unit except when it is located at a commercial or industrial facility or if it burns solid waste as defined in the secondary materials rule.

These amendments become effective on the date of publication.

### **Affirmative defense proposed rule**

In 2010, EPA approved Texas' State Implementation Plan (SIP). This plan included provisions for an affirmative defense during upsets and unplanned events. This was challenged in the U. S. Court of Appeals for the 5<sup>th</sup> Circuit. In 2013, the 5<sup>th</sup> Circuit upheld EPA's approval of the SIP (*Luminant Generation Co. v. EPA*, 714 F.3d 841). The affirmative defense provisions in the Portland Cement MACT rule were challenged in 2013 in the U. S. Court of Appeals for the District of Columbia Circuit. In 2014 the D. C. Circuit vacated the affirmative defense provisions of this rule stating that the Clean Air Act gives the district courts the sole authority in federal enforcement proceedings to determine whether a penalty for a violation of section 112 standards is appropriate (*NRDC v. EPA*, 749 F.3d 1055). Under the Obama Administration, EPA decided that the NRDC ruling should also apply to all state plans that contained affirmative defense provisions and issued SIP calls to a number of states, including Texas. In this SIP call, EPA asked the states to remove their affirmative defense provisions. Some states complied while others did not. Texas responded with revised affirmative defense

provisions that only applied in state courts. On April 29, 2019, EPA Region 6 made a finding that Texas' revised SIP is adequate and proposed to withdraw the 2015 SIP call for Texas. If finalized as proposed, Texas can continue to allow an affirmative defense that applies to state penalties as enforced by state courts. Comments will be accepted until June 28, 2019.

### **Ignitable waste test method proposed rule**

On April 2, 2019, EPA published a proposed rule to make several modifications in ignitable waste test methods and other sampling issues. The proposed rule contains five major actions:

- Updating the flash point test methods required for determining whether a material is a hazardous waste (last updated in 1980);
- Codify existing guidance on the alcohol exclusions;
- Codify existing guidance on waste mixtures that have multiple phases;
- Update cross-references to Department of Transportation regulations and remove obsolete information; and
- Provide alternatives to mercury thermometers.

In addition to the proposed regulatory changes, EPA is asking for specific comments on several other issues pertaining to the alcohol exclusion. These include:

- Should there be any other revisions to this exclusion;
- How much waste is generated and managed under the current exclusion;
- How specific excluded waste is currently managed;
- Do industry-specific or waste-specific management standards already exist for these excluded materials;
- Are there materials that are not currently excluded but should be; and
- Are there any examples of damages that resulted from mismanagement under the current exclusion?

The comment period ends June 3, 2019.

### **Turbine RTR proposed rule**

On April 12, 2019, EPA published a proposed risk and technology review (RTR) rule for the stationary combustion turbine source category. EPA found that the risks from this source category were acceptable. They also did not identify any new cost-effective controls that would reduce emissions. However, they are proposing to remove all startup, shutdown, and malfunction provisions and require electronic reporting of all test results. Additional details can be found in the *Federal Register* notice.

## **OSHA PSM amendments**

On April 15, 2019, OSHA published a direct final rule to correct errors. One was to correct the Chemical Abstract Service (CAS) number for methyl vinyl ketone. Others include requiring employers to use slings with permanently affixed markings that depict maximum load capacity, similar marking provisions for shackles, and restoring load capacity tables that were inadvertently removed in previous rulemakings. Additional details can be found in the *Federal Register* notice.

## **RCRA citizen suits**

William and Nancy Liebhart own three houses on the same block in Watertown, WI. Most of the rest of the block is occupied by an abandoned transformer factory. In 2014, SPX Corporation demolished the building under a self-implemented clean-up plan, as required by regulations. The Liebharts noticed dust from the demolition on the snow on their property and filed a complaint with the local government. They collected samples of the dust covered snow and placed it in a mason jar. After the Department of Natural Resources contacted SPX, the company took soil samples and found the neighborhood contaminated with PCBs. The Liebharts vacated the property and filed suit in federal district court alleging the company had failed to use appropriate safety methods to control dust generated during the demolition and as such, exposed them to potential health risks from PCBs. During the discovery phase of the suit, more extensive sampling revealed PCB contamination outside and inside their home. However, blood tests for the couple came back negative for PCBs. The defendants were able to get most of the expert testimony thrown out because it was based on the improperly handled dust covered snow sample. With this evidence no longer allowed, the district court did not know whether the PCB contamination came from the demolition or from past activities. But more telling was the lack of PCB in the blood samples. The district court dismissed the suit because the Liebharts failed to show an imminent threat under RCRA. The Liebharts appealed the decision to the U. S. Court of Appeals for the 7<sup>th</sup> Circuit. On March 6, 2019, the 7<sup>th</sup> Circuit vacated the district court decision and sent it back to be reconsidered. The 7<sup>th</sup> Circuit said the district court used the wrong standard when evaluating whether there was an imminent and substantial endangerment under RCRA. The statute does not require actual harm but only requires that the harm “may” be imminent. The 2<sup>nd</sup>, 4<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, and 11<sup>th</sup> Circuits have already ruled on similar issues using the “may” clause but the district court did not refer to any of these decisions. While the district court may still come to the same conclusion in re-hearing, this ruling continues a series of appeal court rulings where the defendant does not have to show actual harm but only the potential for harm.

## **Baltimore ordinance requiring CEMs**

Baltimore Council Bill #18-0306 was introduced on November 19, 2018. It was co-sponsored by 13 of the 15 councilmen. It was read for the second time on February 4, 2019, and passed on February 11, 2019. It was signed into law by the Mayor on March

7, 2019. This local law requires every solid waste incinerator within the city limits to install CEMs and meet specific emission standards. The law applies to every incinerator, gasification, and/or pyrolysis unit that handles more than 25 tons of waste per day. There are two units that meet this definition: Wheelabrator's waste-to-energy facility (burns up to 2,250 tons per day); and Curtis Bay Energy, a medical waste incinerator that burns about 70 tons per day. The law required each facility to contract with an "air monitoring contractor" to install, operate, and maintain CEMs for dioxins/furans, carbon dioxide, carbon monoxide, hydrochloric acid, hydrofluoric acid, nitrogen oxides, sulfur dioxide, particulate matter, volatile organic compounds, polycyclic aromatic compounds, arsenic, cadmium, chromium (VI), lead, manganese, mercury, nickel, selenium, and zinc. All CEMs are to be operational at all time the facility is in operation. Any CEMs down more than 30 consecutive minutes is considered a violation. The facilities will be required to submit data on a daily basis, including raw data. In addition, the law includes air emission limits some of which are more stringent than federal limits while others are less stringent.

An "air monitoring contractor" is defined as "an environmental engineer certified by the city to design, install, operate, and maintain the continuous monitoring systems." The law gives the City six months to certify at least one "air monitoring contractor." The ordinance takes effect 18 months after it was signed.

On April 30, 2019, Wheelabrator, Curtis Bay Energy, the Energy Recovery Council, the National Waste and Recycling Association, and TMS Hauling filed a lawsuit in the United States District Court for the District of Maryland seeking to overturn 18-0306. The suit alleges that the law is an illegal effort to shut down these two facilities.

### **Coal ash**

Duke Energy currently operates a number of storage basins for coal ash in North Carolina. Some of these sites are active while others are at facilities that have been closed. Duke has already agreed to move the materials from 21 of these basins to lined landfills but proposed capping nine of the basins they believed to be structurally sound. On April 1, 2019, the North Carolina Department of Environmental Quality (NC DEQ) ordered the company to move the materials from these nine sites. NC DEQ stated that the only way to protect public health and the environment is to excavate and move the material to a lined landfill. The company estimated that it would take 30 years and \$1 billion to move the material from one of the largest sites.

### **Plastics recycling**

Brightmark Energy announced plans to build a 112,000 square foot plant to recycle plastics in Ashley, IN. The plant will use the RES Polyflow patented technology to convert 100,000 tons of plastic per year to ultra-low sulfur diesel, naphtha blend stocks, and commercial waxes. BP has agreed to buy the diesel and AM Wax has agreed to buy the wax produced. Ground-breaking is expected in May 2019 with initial operations to begin in late 2021. RES Polyflow's technology consists of a reactor vessel where

hydrocarbons are indirectly heated in a closed, anaerobic system (pyrolysis) and the resulting liquids are collected in a series of condensers. When operational, this will become the largest plastics recycling facility in the world.

### **PIC Congress**

The PIC Congress is a biannual gathering of researchers to discuss issues related to the formation, environmental fate, health effects, policy, and remediation of combustion by-products. The 2019 congress will be held on July 10-12 in Ann Arbor Michigan. The deadline for abstracts is May 31, 2019. Additional details can be found at <https://pic2019.engin.umich.edu/>.

### **CRWI meeting**

The next CRWI meeting will be on May 21-22, 2019, in Kingsport, TN. It will feature a tour of Eastman's hazardous waste combustion units. For additional information, contact CRWI (mel@crwi.org or 703-431-7343).