



CRWI Update April 30, 2021

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Heritage Thermal Services
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INDIVIDUAL MEMBERS

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

ACADEMIC MEMBERS

(Includes faculty from:)

Clarkson University
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Biden EPA at 100 days

A new administration is often judged by what they accomplish in the first 100 days. While this is a bit silly when judging regulatory actions that may take two to three years to accomplish, the first 100 days is often used to predict the future for the rest of the president's term. True to his campaign promises, the themes around climate change, environmental justice, removing previous administration actions, and per- and polyfluoroalkyl substances (PFAS) are front and center. During President Biden's recent climate change summit, he committed the United States to reduce greenhouse emissions by up to 52 percent based on 2005 levels by 2030. While the Administration will seriously try to reach that goal, they have not released details on how this is to be accomplished. Meanwhile, environmental groups added to a 2009 petition asking EPA to set national ambient air quality standards for carbon dioxide. This follows a March 4, 2021, withdrawal of a Trump Administration denial of the original 2009 petition.

On April 7, 2021, EPA Administrator Regan sent a memo to all EPA personnel directing them to "examine, and appropriately use, the full array of policy and legal tools at our disposal to incorporate environmental and climate justice considerations in our analysis, rulemaking, permitting, enforcement, grantmaking, operations, disaster response and recovery, and other activities." The memo goes on to instruct all EPA offices to:

- Strengthen enforcement of violations of environmental statutes and civil rights laws in communities overburdened by pollution;
- Take immediate steps to incorporate environmental justice into the regulatory development process and consider regulatory options to maximize benefits to environmental justice communities;
- Take immediate steps to improve early and more frequent engagement with environmental justice communities impacted by rulemaking, permitting decisions, enforcement decisions, and policies; and
- Consider and prioritize direct and indirect benefits to underserved communities to the extent allowed by law.

In addition, Administrator Regan announced (April 27, 2021) plans to update toxic release inventory (TRI) requirements to advance environmental justice concerns. This announcement included plans to propose rules to expand the reporting requirements to include certain ethylene oxide emitters and natural gas processing facilities, add additional PFAS compounds, add a search tool that includes income profile and racial makeup, and launch a Spanish language version of the TRI website.

In February, EPA sent a list of Trump Administration rules that were being reviewed to the Office of Management and Budget (OMB). Neither EPA nor OMB have released that list. Most observers expect to get their first look at the list when the Spring Regulatory Agenda is released (typically in mid-May). Even without the list, one can get some idea of where this administration is going by looking at other actions. For example, two of the five actions currently at OMB for review are final rules to withdraw Trump Administration rules on science transparency policy and cost-benefit.

In addition, EPA requested vacatur of the methane emissions rule for landfills and the rule that restricted greenhouse gas regulations to those industry sectors that contribute more than 3 percent of the total U.S. greenhouse gas emissions. The court granted those two requests as well as granting requests to hold a number of other Trump Administration rule litigations in abeyance while the current Administration decides whether to continue to defend those rules.

Methane CRA

One of the tools a new administration can use to remove regulations promulgated in the last stages of the previous administration is a resolution of disapproval under the Congressional Review Act (CRA). Under CRA, if both Houses of Congress pass a resolution of disapproval and the President signs it, that regulation is removed and the agency is not allowed to develop a similar regulation in the future. As such, it is considered by some Democrats as an inappropriate tool because it could preclude future regulation for that source category. However, they may have found a use for this in the Trump Administration rule to loosen restrictions on methane emissions from the oil and gas sector. Their logic is if they remove the Trump Administration rule, the more stringent requirements promulgated under the Obama Administration would take their place. Two joint resolutions of disapproval for the Trump Administration methane emissions rule have been introduced. On April 28, 2021, the Senate passed S. J. Res 14 by a 52-42 vote and it has been sent to the House. A similar resolution (H. J. Res 34) has been introduced in the House but has not seen any action.

CEQ guidance document rule rescinded

On January 8, 2021, the Council on Environmental Quality (CEQ) published a final rule that required all guidance documents must be on their web-based portal before they could be used. This was to implement an Executive Order by the Trump Administration. On April 13, 2021, CEQ published a direct final rule that rescinded the January 8 action.

CEQ documents no longer have to be in the portal before they can be cited, used or relied upon. It is not known if EPA will follow this lead.

RTR rules

On April 21, 2020, the U.S Court of Appeals for the District of Columbia Circuit remanded the pulp and paper risk and technology review (RTR) rule because the Agency failed to set limits on all hazardous air pollutants emitted by these sources. This decision was released shortly before six other RTR final rules were to be published. Even though the Agency suspected the decision would impact these rules, they were also under a court ordered deadline to publish those rules. They chose to continue with publication without correcting the flaws identified in the April 21 decision. EPA has since examined those rules and determined that five need revisions to add emission limits. EPA determined that the original MACT rule for the iron and steel foundries source category covered all pollutants emitted and no additional revisions are necessary. However, for the other five, the Agency will need to gather data and develop MACT standards for the pollutants not included in the original rules. The Agency has asked the court for the following time line to promulgate the revised final rules.

Rubber tire manufacturing	October 27, 2022
Miscellaneous coating manufacturing	February 16, 2023
Lime manufacturing plants	February 23, 2023
Plywood and composite wood products	November 16, 2023
Taconite iron ore processing	November 16, 2023

Having to go back and redo these five rules will add to the already complicated set of deadlines for the Office of Air Quality Planning and Standards.

EPA Council on PFAS

On April 27, 2021, EPA Administrator Regan established a group of senior EPA career officials to develop strategies on the best ways to use EPA's authority, expertise, and partnerships to address PFAS pollution. Radhika Fox, currently Deputy Assistant Administrator for the Office of Water, and Deb Szaro, acting Regional Administrator for Region 1, will head the group. The group has been asked to develop a multi-year strategy to ensure EPA is protecting the American public. The council has been given 100 days to develop initial recommendations. A copy of the memo can be found at <https://www.epa.gov/pfas/memo-epa-council-pfas>.

OECA extends COVID flexibility

On April 7, 2021, EPA's Office of Enforcement and Compliance Assurance (OECA) sent a letter to the states, tribes, territories, and local agencies extending the 2020 enforcement flexibility program until September 2021 and beyond if necessary. This will allow local regulators to use both on-site and off-site compliance tools. While the

Agency believes it is important to conduct on-site inspections when it is safe to do so, it will allow off-site compliance monitoring activities to count towards commitments under OECA programs and requirements under EPA grants. A copy of the memo can be found at <https://www.epa.gov/sites/production/files/2021-04/documents/inspectioncommitments-extension.pdf>.

OECA adds environmental justice goals

On April 30, 2021, EPA's Office of Enforcement and Compliance Assurance (OECA) sent out a memo to staff and the regions outlining steps needed to achieve environmental justice goals. To achieve these goals, OECA is planning to:

- Increase the number of inspections in overburdened communities;
- Strengthen the enforcement in overburdened communities by preventing further pollution due to non-compliance, mitigate past impacts from pollution, seek penalties for violations, seek early and innovative relief (e.g., fence line monitoring, transparency tools), Supplemental Environmental Projects, and obtaining restitution for victims of environmental crimes; and
- Increase engagement with the communities about enforcement cases by providing information, using tools like EJSCREEN, and increasing community engagement on clean up agreements.

In addition, OECA has set up an Enforcement Steering Committee of six senior managers from OECA headquarters and the regions to oversee this work. A copy of the memo can be found at <https://www.epa.gov/compliance/appropriate-injunctive-relief-civil-enforcement-settlements>.

EPA personnel

On April 27, the Senate voted 52-42 to confirm Janet McCabe as the next Deputy Administrator for EPA. She was sworn into office shortly after the vote. President Biden has sent four nominations for EPA Assistant Administrators to the Senate. Jeffery Prieto has been nominated to be the next General Counsel. He is currently general counsel for the Los Angeles Community College District but held previous positions in EPA, Department of Justice, and the Department of Agriculture. Jane Nishida has been nominated to be the next Assistant Administrator for the Office of International and Tribal Affairs. She has previously worked at the World Bank and Maryland's Department of Environment. Radhika Fox has been nominated to be the next Assistant Administrator for the Office of Water. Previously, she was the CEO of the U.S. Water Alliance. Michal Freedhoff has been nominated to be the next Assistant Administrator for the Office of Chemical Safety and Pollution Prevention. Ms. Freedhoff has previously worked for the Senate Environment and Public Works Committee. Ms. Nishida, Ms. Fox, and Ms. Freedhoff have all been Acting Assistant Administrators for their respective offices for a couple of months. The Federal Vacancies Reform Act limits how long an individual can be in an "Acting" capacity for the positions they are nominated to fill permanently. Because of this, all three have stepped down from their

“Acting” positions to take a Deputy Assistant Administrator position in their respective offices and the “Acting” position will be left vacant. For all intents and purposes, they are still the highest political appointee for their office and are essentially making the majority of the policy calls.

EPA personnel returning to the office

Under the Trump Administration, EPA had started moving personnel back into the offices with the goal of having all offices fully re-opened in the near future. The Biden Administration has stopped that process and is now allowing “maximum telework.” The current policy also minimizes travel. It is unclear how long the “maximum telework” policy will remain in place.

CSB nominations

President Biden has nominated Sylvia Johnson, Jennifer Sass, and Steven Owens to fill three of the four empty slots in the Chemical Safety and Hazard Investigation Board (CSB). The previous administration did not refill any of the slots as their 5-year terms expired. This has left the Board with only one member, Katherine Lemos, the Chairman and CEO. Ms. Johnson is a former labor union safety official who currently serves as a lobbyist for the National Education Association. Dr. Sass is toxicologist currently working as a senior scientist at the Natural Resources Defense Council. Mr. Owens is currently an attorney with Squire Patton Boggs but was the Assistant Administrator for EPA’s Office of Chemical Safety and Pollution Prevention during the Obama Administration. In addition, CSB has announced their intention to hire additional investigators.

FY 2020 EPA budget

In every budget request for EPA under President Trump, he requested less funding than was appropriated. For example, for FY 2021 President Trump requested \$6.71 billion and Congress appropriated \$9.24 billion. In his initial request for funds for EPA for FY 2022, President Biden is asking for \$11.2 billion. According to the press release, this increase is needed to tackle climate change, deliver environmental justice to overburdened communities, invest in critical water infrastructure, protect communities from hazardous waste, address per- and polyfluoroalkyl substances pollution, and add personnel to be able to carry out EPA’s core mission. President Trump’s budget requests were routinely disregarded by Congress. It is too early in the process to tell how this Congress is going to react to the current request.

PFAS Action Act of 2021

On April 13, 2021, Congresswoman Debbie Dingell (D-MI) and Congressman Fred Upton (R-MI) announced legislation to require EPA to develop comprehensive regulations to govern the emissions of per and polyfluoroalkyl substances (PFAS). While most of the provisions of this legislation were approved by the House in the last

Congress, this version adds a few new requirements. Like the previous version, this version would require EPA to designate PFAS compounds as hazardous substances under CERCLA, set national drinking water standards, and require safe incineration of PFAS containing wastes. The current version adds a requirement for EPA to include PFAS compounds to the list of hazardous air pollutants (HAP) and revise the list of source categories under the Clean Air Act. If this provision is included in the final legislation, a number of MACT rules will be reopened. Since similar legislation passed the House in the last Congress and the dynamics are much the same in this Congress, it is likely that this legislation will also pass the House. In the last Congress, Senate Majority Leader McConnell (R-KY) refused to bring the House passed version to the floor for consideration. In this Congress, Senate Majority Leader Schumer (D-NY) will press for consideration. Whether the sponsors have the votes to get it passed in the Senate is still to be determined. As of the end of April, the legislation has not been formally introduced. When it does, it will be assigned to the House Energy and Commerce Committee for consideration.

EPA thermal treatment research on PFAS destruction

EPA released two papers on thermal treatment of per- and polyfluoroalkyl substances (PFAS) in April. The first was a paper published in *Chemosphere* (June 2021) that describe experiments on using temperature and calcium oxide to destroy four fluorotelomer alcohols (4:2 FTOH, 6:2 FTOH, 8:2 FTOH, and 10:2 FTOH). This work was done by EPA scientists at their Research Triangle Park facilities using a flameless tube furnace. Temperatures were varied from 200 °C to 800 °C with and without added calcium oxide. Results showed that destruction depended upon the length of the compound (shorter chains were more easily destroyed at lower temperatures). The addition of calcium oxide increased the destruction percentage of all four compounds at lower temperatures. At temperatures above 700 °C, all four compounds were essentially destroyed. The authors also looked at products of incomplete combustion. They state that at temperatures above 600 °C, most of the products of incomplete destruction were also being destroyed, removed by calcium oxide treatment, or no longer being formed.

The second paper was the results of EPA's sampling during the October 2019 test at the Natural Resource Corporation's (now U.S. Ecology) facility in Moose Creek, AK. This facility was originally designed to treat petroleum contaminated soils. The test was conducted while the unit was processing soils contaminated with aqueous film forming foam. The facility is a rotary kiln with a secondary combustion chamber. Air pollution controls include a quench tower, baghouse and wet scrubber. Operating temperatures in the rotary kiln range from 1200 °F to 1500 °F. Temperatures in the secondary chamber range from 1600 °F to 2000 °F. The quench tower reduces the gas temperatures to 350 °F before entering the baghouse. The experiment had two primary goals: to evaluate test methods for measuring PFAS compounds in stack gases; and to conduct a comprehensive characterization of products of incomplete combustion generated from this facility. The focus of the first goal was the evaluation of a modified Method 0010 train to collect polar and nonpolar semi-volatile and non-volatile PFAS

compounds. A total of six Method 0010 runs were made. Runs 1, 3, and 5 were designated for targeted and non-targeted polar semi-volatile and non-volatile PFAS compounds analysis. Runs 2, 4, and 6 were designated for non-targeted, non-polar semi-volatile and non-volatile PFAS compounds analysis. The report does not include any results from runs 2, 4, and 6. EPA determined that the first part of the project was successful and EPA released the revised method as OTM-45. The Method 0010 samples were analyzed for 28 PFAS compounds while the SUMMA canisters were analyzed for six compounds. During the analysis, it was determined there was contamination of the XAD resins prior to being used. The analysis showed non-detects for 17 of the 28 compounds sampled for in the Method 0010 train. The concentrations of volatile PFAS compounds as sampled using the SUMMA canisters were all below the detection limit. The report showed greater than 99% DRE under these operating conditions. There was little discussion on the identification and quantification of products of incomplete combustion. A secondary goal was to evaluate the use of a modified Method 18 as a potential total organic fluorine method. This was not successful.

Links to both of these papers can be found on EPA's PFAS research website (<https://www.epa.gov/chemical-research/status-epa-research-and-development-pfas>).

CRWI meetings

Our May 19-20, 2021, meeting will be virtual. Please contact CRWI (mel@crwi.org or 703-431-7343) if you have interest in attending.