



CRWI Update April 30, 2022

MEMBER COMPANIES

Clean Harbors Environmental Services
Eastman Chemical Company
Heritage Thermal Services
INV Nylon Chemicals Americas, LLC
Ross Incineration Services, Inc.
The Dow Chemical Company
Veolia ES Technical Solutions, LLC

GENERATOR MEMBERS

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Formosa Plastics Corporation, USA
3M

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Civil & Environmental Consultants, Inc.
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Eurofins TestAmerica
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Ramboll
Spectrum Environmental Solutions LLC
Strata-G, LLC
SYA/Trinity Consultants
TEConsulting, LLC
TRC Environmental Corporation
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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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Environmental justice

Early into his term, President Biden issued Executive Order 13985 requiring all federal agencies to determine how underserved communities face systemic barriers in accessing federal benefits and opportunities. On April 14, 2022, EPA released their Equity Action Plan (<https://www.epa.gov/environmentaljustice/equity-action-plan>) to address that requirement. The plan has six priorities:

- Develop a comprehensive framework for considering cumulative impacts in relevant EPA decisions and operationalize that framework in EPA's programs and activities;
- Build the capacity of underserved communities to provide their experience to EPA and implement community-led projects;
- Develop EPA's internal capacity to engage underserved communities and implement clear and accountable processes to act based on communities' input;
- Strengthen EPA's external civil rights compliance program and ensure that civil rights compliance is an agency-wide responsibility;
- Integrate participatory (community) science into EPA's research and program implementation; and
- Make EPA's procurement and contracting more equitable.

For each priority, the Agency has developed discussions around barriers to equitable outcomes, planned actions to overcome those barriers, methods of tracking progress, and ways to ensure accountability.

Congress declined to provide funding to EPA in FY22 for merging environmental justice offices into a single office with an assistant administrator. At least part of the reasons given were that EPA failed to provide sufficient detail in the budget request. In the FY 23 budget request, EPA has added details on how they would like to restructure the offices and the justification for doing so. This includes merging the Office of Environmental Justice and its External Civil Rights Compliance Office under the new assistant administrator. The FY23 budget request does not provide many additional details other than to say that the new assistant

administrator would coordinate the Agency's programs to maximize benefits to underserved communities. It will take some time to determine whether this is sufficient to convince Congress to fund the endeavor.

States have been asking EPA to provide guidance on what their authorities and roles are in environmental justice decisions. During an address to the Environmental Council of States, EPA Administrator Regan indicated that two guidance documents would be released shortly to address these questions. One guidance will be on legal tools available to the states. The second will be a question-and-answer document on how environmental justice and civil rights law can be applied to permitting. He did not elaborate on an estimated date for release for either document.

On March 31, 2022, Florida Rising submitted a complaint to EPA alleging that the Florida Department of Environmental Protection's (DEP) recent announcements for a public hearing for the Miami-Dade County waste-to-energy permit violated civil rights laws and EPA's nondiscrimination regulations. Specifically, Florida Rising stated that the current announcements discriminate against their members, residents of Doral, persons with limited English proficiency, and members of the communities surrounding this facility. The announcement for the public hearing was in English only. In addition, there was confusion on holding a virtual public hearing that resulted in the original hearing being canceled. The complaint requests that EPA require Florida DEP to resolve language violations when setting up the next public meeting, have a hybrid virtual/in-person public meeting, and take into account environmental justice in its permitting action so as to not disproportionately harm disadvantaged communities in and around Doral. EPA has not yet responded to the complaint. It is likely that Florida DEP will resolve to some of the complaints when the next public meeting is scheduled.

PFAS

On March 14, 2022, EPA published a direct final rule and a proposed rule that incorporated the American Society for Testing and Materials' (ASTM) revised standard practices (E1527-21) for site assessment into its All Appropriate Inquiries (AAI) rule for site assessment under CERCLA. However, this rule did not remove the reference to the E1527-13, the method that was replaced. Thus, both methods were allowed under the direct final rule. In addition, E1527-21 contains a footnote that suggests per- and polyfluoroalkyl substances (PFAS) or other emerging contaminants be included in the assessments if states define those compounds as hazardous substances and users wish to obtain state liability defenses. Several entities filed comments objecting to this action. One group was concerned that allowing both methods would create confusion and suggested that the reference to E1527-13 be removed. Another objected to the footnote including PFAS evaluations. As a result of these adverse comments, EPA plans to withdraw the direct final rule on May 2, 2022. The comment period for the proposed rule part of this action closed on April 13, 2022. The Agency will now examine the comments received and decide how to go forward. It could finalize again as proposed or it could modify the next final rule based on comments received. EPA has not released a timetable for further actions.

The proposed rule to add perfluorooctanoic acid and perfluorooctane sulfonic acid to the list of hazardous substances under CERCLA was sent to the Office of Management and Budget (OMB) on January 10, 2022. A number of entities have met with OMB on this action. Some of the more vocal critics of this endeavor are the waste water treatment facilities who are concerned that this designation will make a number of waste water treatment plants potential Superfund sites. They have asked that waste water treatments facilities be regulatorily excluded from this rulemaking. In addition, they are asking Congress for a legislative exclusion. OMB typically takes 90 days to review an action. This review is taking longer than normal. It is not clear when this review will be completed.

In their FY23 budget request, EPA is asking for \$3 million to expand its role in investigating PFAS releases at processing and disposal sites. The first step is to determine whether processing and disposal sites are contaminating the areas surrounding them. This is an effort to define the universe of facilities that are releasing these materials into the environment. The next move would be to restrict their releases. This is part of an overall request for \$126 million in FY 23 PFAS funding as compared to \$76 million appropriated in FY 22. All of this is very interesting for a series of chemicals that have not yet been designated as hazardous wastes under RCRA, hazardous air pollutants under the Clean Air Act, or a contaminant under the Safe Drinking Water Act.

Under the FY 22 National Defense Authorization Act, the Department of Defense (DoD) was required to either develop guidance on the methods to incinerate per- and polyfluoroalkyl substances (PFAS) or ban the incineration of these materials. On April 26, 2022, DoD released a memo that temporarily bans the incineration of materials containing PFAS. The memo told all branches of the service to immediately discontinue contracting activities for the incineration of any PFAS materials. The memo specifically listed aqueous film-forming foam concentrate, rinsate, and water mixtures and any media recovered during cleanup processes. The memo states the ban will be lifted when the department issues guidance that comply with the statute.

1-BP added as HS under CERCLA

In January, EPA formally added 1-bromopropane (1-BP) to the list of hazardous air pollutants (HAP) under the Clean Air Act. The statutory language in the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) includes by reference all HAPs into the list of hazardous substances (HS). On April 8, 2022, EPA published a final rule formally adding 1-BP to the list of hazardous substances under CERCLA. It is not clear what the practical implications are for this action since 1-BP is primarily an occupational inhalation hazard and has never been reported at a Superfund site. In addition, this action removed vacated RCRA waste codes K064, K065, K066, K090, and K091.

Test methods rule

On April 26, 2022, EPA proposed to make several modifications to various test methods. These include modifications to Methods 1, 7, 25, and 26; Performance Specifications 4B, 6, 12A, and 16; and Procedures 1 and 5. EPA is also proposing to remove the Interference Response Test requirement in the Appendix to Part 63, Subpart EEE. Details can be found in the *Federal Register* notice. Comments due June 27, 2022.

RMP rule

On April 27, 2022, EPA sent proposed amendments to the risk management plan (RMP) to the Office of Management and Budget (OMB) for their review. While neither EPA nor OMB reveal the contents of actions under review, most observers expect that these amendments will restore the majority of the actions removed by EPA during the Trump Administration. Typically OMB takes 90 days to review an action. One should expect a proposed rule to be released in August or September. To make things more interesting, a group of 31 House and Senate Democrats sent a letter (April 14, 2022) to EPA urging the Agency to consider climate change as a threat multiplier when amending this rule.

SSM SIP call

In 2015, EPA requested that 36 states revise their State Implementation Plans (SIP) because they contained what the Agency considered as improper use of either startup, shutdown, and malfunction (SSM) plans or because they included allowances for an affirmative defense. The Trump Administration did not enforce this policy and some of these SIPs were not revised. When the Biden Administration took office, they reinstated the 2015 policy and started work on revising the plans for those states that had not already complied. Environmental groups became frustrated with the rate at which EPA was pursuing these revisions and filed a deadline suit in September 2021. EPA and the environmental groups agreed on a proposed schedule (published in the April 11, 2022, *Federal Register*). In the proposed schedule, EPA agrees to sign final rules either approving or disapproving SIPs from California, Georgia, Indiana, Michigan, Minnesota, and West Virginia within 240 days of finalizing the decree. Within 360 days, EPA will sign final rules for Florida, Kansas, Kentucky, Maine, Missouri, New Mexico, North Dakota, South Carolina, Tennessee, and Virginia. Also included are specific dates ranging from 180 days to 480 days for the states of Colorado, Delaware, Louisiana, Oklahoma, Mississippi, New Jersey, and Washington. EPA will take comments on the draft schedule until May 11, 2022.

LQG quick reference guide FAQ

Large quantity generators (LQG) are required to develop a quick reference guide under 40 CFR 262.262. On April 19, 2022, EPA's Office of Resource Conservation and Recovery released a memo to the regions with a list of frequently asked questions

(FAQ) pertaining to these requirements. Some elements of this have been included on EPA's website (<https://www.epa.gov/hwgenerators/frequent-questions-about-implementing-hazardous-waste-generator-improvements-final#general>) but it does not appear to have incorporated a link to the most recent memo. Until it does, a copy of the memo can be obtained from CRWI.

EPA personnel

On April 7, 2022, the Senate Environment and Public Works Committee advanced the nominations of Carlton Waterhouse to be the next Assistant Administrator for the Office of Land and Emergency Management and David Uhlmann to be the next Assistant Administrator for the Office of Enforcement and Compliance Assurance both by 10-10 votes. These nominations join the nomination of Christopher Frey to be the next Assistant Administrator for the Office of Research and Development. None of the three are on the Senate calendar. On April 25, 2022, President Biden formally withdrew the nomination of Amanda Howe to be the next Assistant Administrator for the Office of Mission Support.

In addition, EPA Administrator Regan named Grant Cope, a former California Department of Toxic Substances Control official to be a senior counsel in support of the waste and toxics offices in environmental justice matters. Mr. Cope had been considered for the Assistant Administrator for the Office of Land and Emergency Management until certain California environmental justice groups opposed that nomination.

Enforcement

One of EPA's National Compliance Initiatives for the past several years has been to reduce the air emissions from hazardous waste facilities. On their webpage (<https://www.epa.gov/enforcement/national-compliance-initiative-reducing-hazardous-air-emissions-hazardous-waste>), EPA reported that for FY 2021, the Agency concluded 32 formal enforcement cases and issued an additional twenty enforcement actions. The web site has links to five specific actions (Fairfield Semiconductor, Emerald Kalama Chemical, 3M, Clean Harbors, and Fuch Lubricants. Based on the map on the website, these activities appear to be concentrated in California and the Northeast. Also according to the website, 27% of all compliance monitoring were based on off-site evaluations.

AWMA PFAS conference

The Air and Waste Management Association (AWMA) is planning a conference on PFAS issues for November 8-10, 2022, in Durham, NC. EPA is participating in developing this conference. Additional details can be found on AWMA's Events page (https://www.awma.org/calendar_list.asp).

Dioxin conference

The 42nd International Symposium on Halogenated Persistent Organic Pollutants will be held in New Orleans on October 9-14, 2022. The organizers have released a call for abstracts. Additional information and instructions for submitting abstracts can be found at <https://www.dioxin2022.org/>.

CRWI meetings

Our next meeting will be virtual and will be on May 18-19, 2022. Please contact CRWI (mel@crwi.org or 703-431-7343) if you have interest in attending.