



CRWI Update August 31, 2018

MEMBER COMPANIES

Clean Harbors Environmental Services
DowDuPont
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
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
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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RMP delay rule vacatur

The first accidental release prevention regulations were promulgated in 1996. In 2012, environmental groups petitioned EPA for a rulemaking under paragraph 112(r)(7) of the Clean Air Act to require the use of inherently safer technologies by facilities that use or store hazardous chemicals. Several incidents happened in and around that time period, including the West, TX fire and explosion that killed 14 people. On August 1, 2013, President Obama signed an executive order telling EPA and OSHA to develop a plan to expand, implement, and enforce the risk management plan (RMP) regulations to prevent such future disasters. EPA and OSHA responded by proposing rules. EPA promulgated a final rule on January 13, 2017, adding a number of new RMP requirements but OSHA never completed their rulemaking. The effective date for EPA's rule was March 14, 2017. When President Trump took office, EPA published a direct final rule delaying the effective date for this and 29 other EPA rules until March 21, 2017. On February 28, 2017, industry submitted a petition for reconsideration of certain parts of the rule. Two weeks later, EPA announced that the criteria in paragraph 307(d)(7)(B) of the Clean Air Act had been met, granted the petition, and stayed the effective date for the rule for 90 days. During that 90 day period, EPA proposed and finalized (June 14, 2017) a rule to delay the effective date for an additional 20 months (RMP delay rule).

Environmental groups, the steelworkers union, and a number of states challenged the rule alleging EPA did not have the authority to delay the effective date any longer than the 90 days specifically allowed in paragraph 307(d)(7)(B) of the statute. Industry intervened to support EPA in this litigation. On August 17, 2018, the U. S. Court of Appeals for the District of Columbia Circuit agreed with the petitioners and vacated the RMP delay rule. This decision removes the February 19, 2019, effective date allowing the effective date for the new requirements to revert to March 14, 2017.

Typically, participants in a litigation have 45 days after a decision has been released to ask the court for re-hearing or to appeal that decision. In this case, the environmental petitioners filed

a request on August 24, 2018, to expedite the filing of the mandate. Industry and EPA had planned to file motions opposing that request arguing that the motion lacked “good cause to expedite the issuance of the mandate.” Those motions were due on September 4, 2018. However, on August 31, 2018, the court granted the environmental group’s motion and issued the mandate. The industry groups and EPA immediately filed motions asking the court to rescind the decision and recall the mandate. The industry group argued that the August 31 decision violates court procedures for allowing parties to respond to motions and that the court failed to give them adequate notice of their decision to grant the motion to issue the mandate.

The legal wrangling will likely continue. However, for right now, the court has issued mandate and the effective date for revised requirements of the 2017 RMP rule reverts back to the March 14, 2017, date. Both industry and the permitting agencies will have to come up with a procedure for getting affected facilities into compliance.

All of this is complicated by EPA’s current goal of removing most of the requirements added in the 2017 final rule. The comment period for the proposed rule to remove those provisions closed on August 23, 2018. The Agency plans to have a final rule in February 2019. While this ruling may be used in challenging the 2019 final rule, nothing in the August 17 decision prevents the Agency from proceeding with this rulemaking.

Coal ash rule vacatur

In the 2014 coal ash final rule, the Agency decided not to require upgrades or shutdowns of ash disposal sites that lacked a composite liner or are located at a closed power plant unless a leak is detected at the site. Environmental groups challenged this rule and on August 21, 2018, the U. S. Court of Appeals for the District of Columbia Circuit agreed with the petitioners and vacated parts of the rule. The panel of judges described this rule as giving each of these facilities “one free leak.” EPA is aware of 735 coal ash impoundments. The Agency has data on what method of containment is in place for 504 of these units. Eighty five have composite liners, the method the Agency has found to be the most effective at preventing leaks. The impoundments that do not have composite liners will now have to be shut down or retrofitted to prevent any future leaks.

MATS rule

On August 27, 2018, the court granted a joint request from EPA and the challengers to return the Mercury and Air Toxics Standards (MATS) rule challenge to active status. This litigation began in 2011 with challenges to the startup and shutdown provisions. The Agency reconsidered parts of this rule and this case has been consolidated with additional challenges to the 2016 final rule. The environmental groups are challenging the provisions that allow the use of work practices during startups. Industry is challenging the PM work practice standard and the recordkeeping requirements for startup and shutdown periods.

Meanwhile, the Agency continues to grapple with the how to respond to the court decision telling them to redo the “appropriate and necessary finding” for the MATS rule. In the 1990 amendments to the Clean Air Act, the electric power industry has a special provision. EPA was first supposed to do an “appropriate and necessary finding” before setting standards for the sector. The Agency issued the finding in 2000 that it was “appropriate and necessary” to develop emission standards for this sector. This was challenged at the time but the challenge was dismissed because it was not considered to be a final action. When the Agency promulgated the emission standards in 2011, industry again challenged the findings, arguing that the majority of the benefits in the finding came from secondary benefits, not primarily from HAP reductions. The court agreed that this was improper and ordered the Agency to redo the finding. Meanwhile, the compliance date has passed and all electric generation facilities are in compliance. This creates an interesting dilemma where the Agency will have to find the justification for a rule everyone has already complied with. Some of industry is encouraging the Agency to keep the standards in place but reduce the reporting and recordkeeping requirements while others are encouraging the Agency to scrap the entire rule. It is not clear how the Agency is going to address this issue.

Import/export technical amendments

On August 6, 2018, EPA published a *Federal Register* notice changing the address where paper documents concerning the import and export of hazardous waste and conditionally excluded cathode ray tubes must be sent. The new address can be found in the notice.

Delisting approval

On August 22, 2018, EPA approved a delisting petition for the Blanchard Refining Company’s (Texas City, TX) residual solids currently listed as F037 (primary oil/water/solids separation sludge) when reclaimed and disposed of in a Subtitle D landfill. Additional testing is required to ensure that future generated wastes remain qualified for the delisting. Details can be found in the *Federal Register* notice.

Enforcement policy

On August 21, 2018, Susan Bodine, EPA Assistant Administrator for the Office of Enforcement and Compliance Assurance, sent a memo to regional administrators outlining her plan to transition her office’s focus from enforcement to compliance. The FY 2018-2022 Strategic Plan focuses on increasing the environmental compliance rate and shortening the time between the identification of the violation and the correction of that violation. As such, the National Enforcement Initiatives will transition into the National Compliance Initiatives. This strategic plan is designed to use all tools available to the Agency, including general compliance assistance, inspections, informal enforcement, and formal enforcement. However, the areas of concentration for FY 2019 are not much different from those in FY 2018. They include:

- Keeping industrial pollutants out of the water;
- Preventing surface and ground water contamination from animal wastes;
- Keeping raw sewage and contaminated storm water out of the water;
- Reduce air pollution from the largest sources;
- Reducing risks of accidental release from industrial facilities;
- Cutting emissions of HAPs;
- Ensuring that energy extraction activities comply with environmental laws; and
- Reducing air toxic emissions from hazardous waste facilities.

There are few details in the memo on how the transition will take place.

EPA personnel

On August 1, 2018, the Senate Environment and Public Works Committee favorably reported the nomination of Peter Wright to be the next Assistant Administrator for the Office of Land and Emergency Management by a party line vote (11-10). A vote by the entire Senate has not yet been scheduled. On August 31, 2018, President Trump announced his decision to nominate Alexandra Dunn, the current Region 1 Administrator, to be the next Assistant Administrator for the Office of Chemical Safety and Pollution Prevention.

CRWI meeting

The next CRWI meeting is tentatively scheduled for November 7-8, 2018. A location has not yet been determined.