



## CRWI Update August 31, 2020

### 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.  
Montrose Environmental Group, Inc.  
Ramboll  
Spectrum Environmental Solutions LLC  
Strata-G, LLC  
SYA/Trinity Consultants  
TEConsulting, LLC  
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

44121 Harry Byrd Highway, Suite 225  
Ashburn, VA 20147

Phone: 703-431-7343  
E-mail: [mel@crwi.org](mailto:mel@crwi.org)  
Web Page: <http://www.crwi.org>

### Boiler remand proposed rule

The boiler remand proposed rule was published on August 24, 2020. Comments are due on October 23, 2020. A summary of the proposed rule can be found in the July 2020 Update.

### OSWI proposed rule

Regulations for the Other Solid Waste Incineration (OSWI) source category were initially promulgated in 2005. These regulations were challenged and the Agency took a voluntary remand in 2016. In addition, Section 129 of the Clean Air Act requires a technology review of solid waste incinerator regulations every five years. Environmental groups filed a deadline suit arguing that EPA had missed their five-year deadline to complete that review. A district court agreed and set deadlines to propose and finalize a technology review for this source category. On August 31, 2020, EPA published a proposed rule that combines the response to the remand of the 2005 rule with the five-year technology review.

This proposed rule covers two source categories: very small municipal combustors (less than 35 tons per day, VSMWC); and institutional waste incinerators (IWI). When EPA set the 2005 standards, limited emissions data were available and the Agency based OSWI emission limits on hospital, medical, and infectious waste incinerator emission limits. As part of the current rulemaking, the Agency is proposing to move small remote incinerators that burn more than 30% municipal solid waste from the CISWI source category to this rulemaking. In developing the emissions data for the 2020 proposed rule, EPA did not ask facilities to run tests and submit that data but instead searched existing EPA and state databases for emissions data that could be used to set limits. They found emissions data in ECHO and the National Emissions Inventory databases, state permits, data collected in 2010 for the CISWI rule, and data submitted by the Alaska Oil and Gas Association for small remote incinerators. In addition, EPA is proposing to further subcategorize IWI and VSMWC based on size (greater than or less than 10 tons per day). As proposed, there are four subcategories: large IWI; small IWI; large VSMWC; and small VSMWC. EPA determined there have been no technology changes

that merit revisions and thus the emission limits for large IWI and VSMWC subcategories stay the same as were promulgated in 2005. The only limits that are revised are for the small IWI and VSMWC. The proposed emission limits are shown below.

Pollutant	Concentration Units	Existing VSMWC and IWI Units		New VSMWC and IWI Units	
		Small	Large	Small	Large
Cd	µg/dscm	2,000	18	400	18
HCl	ppmvd	500	15	210	15
Pb	µg/dscm	32,000	226	26,000	226
Hg	µg/dscm	69	74	12	74
SO <sub>2</sub>	ppmvd	130	3.1	38	3.1
NO <sub>x</sub>	ppmvd	210	103	180	103
PM	mg/dscm	280	30	210	30
DF (TMB)	ng/dscm	4,700	33	3,100	33
DF (TEQ)	ng/dscm	86		40	
CO	ppmvd	220	40	69	40

Under the 2005 regulations, emission limits for this source category do not apply during startup, shutdown, or malfunction events. In the current rulemaking, EPA determined that units should be able to meet limits during startup because most use natural gas or clean distillate oil to start up and waste is not added until the unit reaches a minimum operating temperature. During shutdown, emissions should be lower because the material in the combustor would be almost fully combusted before shutdown occurs. Based on this logic and the fact that air pollution controls would be the same under startup and shutdown as with normal operations, the Agency is proposing to require that all units meet the proposed emission limits during startup and shutdown.

For malfunctions, the Agency takes the position that Section 129 does not require them to take malfunctions into consideration when setting emission limits. If a source fails meet emission limits during a malfunction, the Agency would take into consideration a good faith effort to minimize emissions during malfunction periods, including preventative and corrective actions, as well as root cause analyses to ascertain and rectify excess emissions. The EPA would also consider whether the source's failure to comply was, in fact, sudden, infrequent, not reasonably preventable, and was not caused by poor maintenance or careless operation.

Comments are due on or before October 15, 2020.

### **EPA 2020 priorities**

In remarks to reporters on August 6, 2020, EPA Administrator Wheeler indicated that the Agency intends to complete the science transparency rule, updates to the cost-benefit procedures for air policies, the lead and copper drinking water rule, and reviews

of the ozone and particulate matter ambient air quality standards by the end of 2020. He also indicated that the Agency is developing an agenda for future work should President Trump be elected to a second term.

### **E-manifest signatures**

In May, the Assistant Administrators for the Offices of Land and Emergency Management and Enforcement and Compliance Assurance released a memo allowing transporters to substitute “Generator using signature substitute due to COVID-19” in the signature box. The generator would then provide a signature substitute through a cell phone text message, email, or hard copy letter sent to the transporter and designated facility. That memo expired on August 31, 2020. On August 20, 2020, the two Assistant Administrators released a second memo that extended the time for allowing a signature substitution until November 30, 2020. In addition, the August memo shortens the phrase that should be written in Box 15 to “COVID-19 signature substitute,” (or abbreviated as “COVID-19 sig. sub.”), removes the reference to the enforcement policy regarding how generators and transporters should maintain documentation, and requires generators and transporters to maintain documentation for three years from the last shipment needing a signature substitute. A copy of the memo can be found at [https://www.epa.gov/sites/production/files/2020-05/documents/covid-19\\_manifest\\_signature\\_temporary\\_policy\\_5-18-20\\_final\\_for\\_signature\\_508.pdf](https://www.epa.gov/sites/production/files/2020-05/documents/covid-19_manifest_signature_temporary_policy_5-18-20_final_for_signature_508.pdf).

### **OMB enforcement memo**

Executive Order 13924 (May 9, 2020) directed agencies to make a series of de-regulatory steps to counter the economic downturn due to COVID. Section 6 of the order pertained to fairness in administrative enforcement. On August 31, 2020, the Office of Information and Regulatory Affairs released a memo to all federal agencies on how to implement Section 6. Some of the instructions include:

- The government should bear the burden of proof for an alleged violation;
- The government should read ambiguities in the statute or regulations in favor of the regulated entity;
- Enforcement should be prompt and fair;
- The agency should inform the party when an investigation is closed;
- The agency should eliminate multiple enforcement actions based on a single incident;
- The government should provide favorable evidence to the party subject to the enforcement action;
- All rules of evidence should be public and clear;
- Penalties should be proportional, transparent, and only as authorized by law; and
- Enforcement activities should be free of surprises to the regulated entity.

A copy of the memo can be found at <https://www.whitehouse.gov/wp-content/uploads/2020/08/M-20-31.pdf>.

## **COVID enforcement policy**

The Texas Commission on Environmental Quality (TCEQ) has developed a policy for companies requesting enforcement discretion during the COVID pandemic. The policy requires the company to send an email to TCEQ with a statement supporting the request, the anticipated duration of the need for enforcement discretion, and a citation to a rule or permit for which enforcement discretion is requested. TCEQ tries to respond to each request within two business days. All details for each request are posted on TCEQ's COVID website. If the request is granted, the company is required to maintain records on how they are attempting to comply. TCEQ has received about 200 requests since March 19, 2020, and granted 85-90% of those requests.

On August 13, 2020, the Environmental Data and Governance Initiative released a report on enforcement statistics for March and April of 2020, the first two months of EPA's COVID enforcement discretion policy. Based on their research, 325 facilities officially told EPA that they would not be submitting discharge monitoring reports (DMR) as required under the Clean Water Act. The report states that this compares to more than 350,000 DMRs that were not filed or were filed late. In addition, the report claims that there was a 40% reduction in the number of stack tests run these two months as compared to the same two months in 2019. The report did not address whether any of these tests were conducted at a later date.

## **EPA's non-thermal PFAS challenge**

On August 25, 2020, EPA announced a \$50,000 challenge to discover new non-thermal technologies and approaches that can remove at least 99% of per- and polyfluorinated alkyl substances (PFAS) in unused aqueous film forming foam without creating any harmful byproducts. The technology must demonstrate scalability and cost effectiveness over thermal methods. It should demonstrate compatibility with current production and destruction practices and avoid creating other toxic residues (defined as hazardous chemicals identified in [EPA's ToxCast database](#)). It should also be "near-market ready" and potentially applicable to other PFAS waste streams. An informational webinar will be held on September 16, 2020. Submittals are due by November 23, 2020, and winners will be announced early in 2021. Additional details can be found at <https://www.epa.gov/innovation/innovative-ways-destroy-pfas-challenge>.

## **EPA PFAS test canceled**

EPA and the New Jersey Department of the Environment were planning a test to determine the effectiveness of a municipal waste incinerator to destroy two non-toxic PFAS indicator compounds. EPA and New Jersey did not inform the community of the test. When a former Region 2 Administrator learned of the test, she raised questions on the goals of the study and the failure to engage with the local community. She expressed concern that the Agency would "cherry pick" the data to justify using incineration as a method for disposal of PFAS wastes. The test has been canceled.

### **CPT plan common deficiencies**

The Texas Commission on Environmental Quality has released a list of common comprehensive performance test (CPT) plan deficiencies. Some of the deficiencies listed are:

- Procedures for rapidly stopping the hazardous waste feed and controlling emissions in the event of an equipment malfunction;
- Target feed rates and operating conditions from the latest Notice of Compliance and RCRA Permit Limits and clearly identifying any changes proposed; and
- Documentation of the historical range of normal metals feed rates for each feed stream.

A complete list can be found at

<https://www.tceq.texas.gov/assets/public/permitting/waste/iHW/I&HW%20CPT%20Plan%20Common%20Deficiencies.pdf>.

### **CRWI meetings**

Our November 18-19, 2020, meeting will be virtual. Please contact CRWI ([mel@crwi.org](mailto:mel@crwi.org) or 703-431-7343) if you have interest in attending.