



CRWI Update August 31, 2021

MEMBER COMPANIES

Clean Harbors Environmental Services
Eastman Chemical Company
Heritage Thermal Services
INV Nylon Chemicals Americas, LLC
3M
Ross Incineration Services, Inc.
The Dow Chemical Company
Veolia ES Technical Solutions, 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
Eurofins TestAmerica
Focus Environmental, Inc.
Franklin Engineering Group, Inc.
Montrose Environmental Group, Inc.
Ramboll
Spectrum Environmental Solutions LLC
Strata-G, LLC
SYA/Trinity Consultants
TEConsulting, LLC
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

43330 Junction Plaza, Suite 164-641
Ashburn, VA 20147

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

EPA FY 2022-2026 draft strategy

EPA has released a fact sheet describing their draft FY 2022-2026 strategy. The four principles are: follow the science; follow the law; be transparent; and advance justice and equity. It follows with four strategies and seven goals that appear to move the Agency back to the issues identified during the Obama Administration. Of the seven goals, four are based on mandates under environmental statutes. These are: clean air and water for all communities; clean and safe drinking water for all communities; safeguard and revitalize communities (RCRA and CERCLA); and ensure chemical and pesticide safety. The other three are: tackle the climate crisis; advance environmental justice and civil rights; and enforce environmental laws and ensure compliance. EPA will submit the draft strategic plan to the Office of Management and Budget in the middle of September. They plan for a comment period in October or November. The final plan is to be released in February 2022. A copy of the fact sheet can be obtained from CRWI.

Hazardous waste incineration capacity

In July, the hazardous waste incineration industry notified EPA they are close to capacity and could no longer accept certain types of containerized waste. The reasons given were COVID related labor shortages; extended maintenance shutdowns; shortage of truck drivers; and increased waste volume. This will put a burden on both generators and treatment, storage, and disposal facilities (TSDF) to meet their regulatory requirements under RCRA. The industry asked EPA to develop a memo to the states and regions to:

- Extend the accumulation times at generators;
- Extend the 10-day transfer requirements to 21 days;
- Change the manifest exception report deadlines;
- Allow temporary storage in unpermitted areas (additional trailers on concrete, rail tanks, and transportable chemical storage units);
- Temporarily increase permitted storage capacities and times; and
- Temporarily increase permitted incineration capacity.

On August 10, 2021, the Office of Resource Conservation and Recovery sent a memo to the regions outlining the options where the states and regions have flexibility to address these issues. EPA's options for generators are as follows.

- Small quantity generators (SQG) can accumulate hazardous waste onsite for 180 days without a permit. If they need to transport more than 200 miles, SQGs can use a self-implementing provision (40 CFR 262.16(c)) to accumulate up to 270 days.
- Large quantity generators, SQGs, and TSDFs can request accumulation time extensions under 40 CFR 262.16(d) and 40 CFR 262.17(b). The initial request is for 30 days. Consecutive extensions are allowed. Federal regulations do not limit the number of extensions.
- When extensions are granted, EPA expects the petitioner and the local permitting authority to assess whether additional protective measures are needed. The memo anticipates increased area inspections, temporary secondary containment, and alerting emergency responders of increased hazardous waste storage.
- Generators may be required to come into compliance with other environmental regulations triggered by storage of increased hazardous waste.
- EPA does not anticipate needing to issue any 30-day extensions past March 31, 2022.
- Petitions should contain proof that they cannot ship their wastes to an incinerator or off-site storage (letter from incinerator).

The EPA options for TSDFs are as follows.

- TSDF may not need permit modifications if their current permit allows storage of these types of waste or their capacity has not been exceeded.
- TSDFs that have reached their storage capacity can request a permit modification (Class 2 or 3) under 40 CFR 270.42. Both require public comment periods.
- TSDFs may request temporary expansions under 40 CFR 270.42(e). These are limited to 180 days provided the petitioner has requested a Class 2 or 3 permit modification.
- Both permit modifications and temporary expansions require review before the facility can operate under the requested changes.
- Permitting authorities should prioritize the review of these requests.

The memo states that emergency permits can be issued when there is an imminent and substantial endangerment to human health or the environment but they do not expect this authority to be needed. The memo has been posted on RCRA online (RCRA Online Number 14939) (<https://rcrapublic.epa.gov/rcraonline/>).

Environmental justice

Frustrated by the perceived lack of concrete actions based on environmental justice issues, activists are suggesting that the administration identify 500 projects for immediate action. They suggested 10 projects in each state with half being in urban areas and half in rural areas. Perhaps in response, EPA officials listed a number of areas of interest at the August 19, 2021, National Environmental Justice Advisory Council meeting. The Assistant Administrator for the Office of Water focused on projects in Flint, MI (to address drinking water issues), EPA's overall water infrastructure plans, and actions to reduce per- and polyfluoroalkyl substance contamination. The Air office confirmed that the Agency would be reconsidering five air toxics rule based on using the more conservative 2016 ethylene oxide toxicity values. The Office of Land and Emergency Management agreed that more community participation was needed in Superfund clean up decisions. In addition, the Administration has initiated a Justice40 accelerator program. The Justice40 program would require 40% of the benefits from federal programs go to minority and low-income communities. The accelerator program consists of 52 grants to environmental justice groups to help them prepare to apply for federal funding when it becomes available. Each grant is for \$25,000. Funds for the program were privately raised and the use of the money is unrestricted.

Activists are also starting to push environmental justice issues at a local level. For example, the Corp of Engineers announced on August 18 that it will require a full environmental impact analysis that includes local environmental justice concerns for the proposed petrochemical plant in St. James Parish, LA. The Port Arthur Community Action Network petitioned the Texas Commission on Environmental Quality to withdraw an umbrella permit for a local calcining plant. The group alleges the permit was issued without conducting an adequate New Source Review that includes environmental justice concerns. Activists in Indiana asked EPA to object to a state permit for a proposed plant to convert electric arc furnace dust to zinc oxide and iron products. The state had issued the plant a "synthetic minor" permit. "Synthetic minor" sources have agreed to limit their potential to emit. In addition, activists are asking the Agency to give them autonomy from state and local authorities in selecting community air monitoring projects. This reflects a lack of trust from some on the current status of monitoring in overburdened communities. Finally, there will likely be a push to increase funding for environmental justice issues in the currently considered \$3.5 trillion infrastructure legislation.

PFAS

EPA has requested nominations of experts to review draft toxicological reviews for perfluorodecanoic acid (PFDA), perfluorononanoic acid (PFNA), perfluorohexanoic acid (PFHxA), perfluorohexanesulfonic acid (PFHxS), and perfluorobutanoic acid (PFBA). Nominations will be accepted until September 22, 2021. Additional information can be found in the August 23, 2021, *Federal Register* notice.

EPA has announced the availability of a draft IRIS toxicological review of PFBA. Comments will be accepted until October 22, 2021. Additional information can be found in the August 23, 2021, *Federal Register* notice.

EPA announced that their per- and polyfluoroalkyl substances (PFAS) council has developed an initial slate of recommendations for the Administrator. However, they declined to release the list to the public at this time. It is assumed that Administrator Regan will use this list to revise the current PFAS Action Plan.

In July, the House passed H.R. 3684 (Infrastructure Investment and Jobs Act) along party lines. The Senate made significant adjustments to the legislation and passed their version on August 10, 2021, by a 69-30 vote. The Senate version contains \$4 billion in grants to help local drinking utilities remove PFAS contamination and \$1 billion to help wastewater treatment facilities address PFAS contamination in their discharges. The bill now goes back to the House for approval.

The House Department of Defense (DoD) appropriations bill currently contains \$549 billion for cleanup of PFAS contaminations on and around military bases. The current version of the House FY 2022 National Defense Authorization Act contains a provision that would require DoD to meet state cleanup standards for PFAS if they are more stringent than federal regulations. The current language also includes a provision that prohibits DoD from using incineration to destroy PFAS wastes until it adopts EPA guidance on disposal. To use incineration for disposal, DoD must either submit a full certification that it is implementing the interim guidance or a final rule once that final rule has been issued. The interim guidance does not endorse or dismiss any treatment or destruction methodology. It is not known when EPA will update this guidance.

The Illinois General Assembly passed HB 3190 in May and sent it to the Governor for signature. HB 3190 banned the use of incineration for the treatment of PFAS wastes in the state. The definition of incineration in the bill included “burning, combustion, pyrolysis, gasification, thermal oxidation, including flameless and regenerative, or the use of an acid recovery furnace or oxidizer, ore roaster, cement kiln, lightweight aggregate kiln, industrial furnace, boiler, or process heater.” On August 24, 2021, the Governor vetoed the bill because the definition of incineration was overly broad. One should expect this effort to be repeated in 2022 with a narrower definition.

Texas Commission on Environmental Quality has requested toxicology data on 16 PFAS compounds. They are requesting “laboratory toxicity studies, human exposure/epidemiology studies, unpublished/industrial reports, risk assessments, and any other information that might not be publicly available.” The intended use is to update TCEQ’s PFAS toxicity factors. They ask for submittals by December 1, 2021. The request can be found at https://www.tceq.texas.gov/toxicology/esl/develop_list.html.

Request for comments on applicability of BB and CC

On August 4, 2021, EPA posted a draft memo on their interpretation of the applicability of RCRA organic air emissions standards (40 CFR Parts 264 and 265 Subparts BB and CC) to equipment and closure devices. The draft memo was prompted by questions about which equipment was subject to which provisions. The potential for misunderstanding is caused by overlapping definitions in two Subparts. This would not be an issue if the compliance requirements for the two Subparts were the same but they are not. Thus, using the wrong compliance requirements could result in enforcement actions. In an effort to resolve this confusion, the Agency is posting a draft interpretation and asking for comments. The interpretation is that any closure device in a “cover” is regulated under Subpart CC while any closure device not on a “cover” is regulated by Subpart BB. The comment period is open until October 3, 2021. A copy of the draft memo can be found at <https://www.epa.gov/hwpermitting/open-public-comment-draft-memorandum-applicability-resource-conservation-and-recovery>.

Site remediation RTR litigation

In 2020, EPA published a final site remediation risk and technology review (RTR) rule. This rule was challenged by the Sierra Club. Sierra Club also filed a petition for reconsideration. The litigation of this regulation was held in abeyance while the Agency decided whether and how to respond to the petition for reconsideration. On August 10, 2021, EPA sent a letter to Sierra Club granting the petition to reconsider. Specifically, EPA will address the exemptions from the 2003 requirements conducted under RCRA and CERCLA; will examine the need to develop requirements for organic hazardous air pollutants (HAP) for this source category; and will reconsider their findings that inorganic and metal HAP emission requirements are not needed. In the letter, the Agency stated they anticipate a final action by the end of 2022. To make that timetable work, EPA will need to propose a rule by the end of 2021. EPA sent an unopposed motion to the court asking that the litigation be held in abeyance until December 20, 2022. On August 18, 2021, the U.S. Court of Appeals for the District of Columbia Circuit granted that motion.

PVC litigation

In 2014, The Center for Biological Diversity (CBD) petitioned EPA to regulate discarded polyvinyl chloride (PVC) as a hazardous waste under RCRA. They also asked EPA to evaluate PVC under TSCA. In 2014, EPA denied the petition to regulate this material under TSCA but has not acted on the RCRA portion of the petition. On August 19, 2021, CBD filed a deadline suit in U.S. District Court for the District of Columbia alleging the Agency violated RCRA and the Administrative Procedures Act by failing to respond to the 2014 petition in a timely manner. The Agency now has two choices: fight the suit; or enter into negotiations with CBD to set a deadline to respond to the petition. They often prefer the latter because past experience has shown they can get more time to respond through negotiations than from a judge. Remember that the end product from this litigation/negotiation is to grant or deny the original 2014 RCRA petition. Any

regulations that may define discarded PVC as hazardous waste would begin after the Agency grants the petition should they make that decision.

Senate next stimulus budget

The Senate developed the outlines of another \$3.5 trillion stimulus package. Instructions were sent to various committees on how to allocate this money. The Environment and Public Works Committee was given \$67 billion to allocate with instructions to spend that money on low income solar and other climate friendly technologies; environmental justice investments in clean water availability; EPA climate and research programs; federal investments in energy efficient buildings and green materials; and investments in clean vehicles. The House has agreed to the Senate outline.

EPA personnel

The Senate Environment and Public Work Committee has scheduled a vote for September 15 on the nomination of Jeff Prieto to be EPA's next General Counsel. In addition, hearings have been scheduled for September 15 for the nominations of Amanda Howe to be the next Assistant Administrator for the Office of Mission Support, David Uhlmann to be the next Assistant Administrator for the Office of Enforcement and Compliance Assurance, and Carlton Waterhouse to be the next Assistant Administrator for the Office of Land and Emergency Management. A date has not yet been set for a confirmation vote for Jane Nishida to be the next Assistant Administrator for the Office of International and Tribal Affairs.

In an internal memo, EPA Deputy Administrator Janet McCabe told EPA staff they would get 45 days notice before being required to return to the office. She added that the management was monitoring the current events and would adjust the return date as appropriate. The memo encouraged staff to get vaccinated but did not require that action. Based on this memo, the earliest staff could return to work is November 7, 2021.

CSB

The Senate Environment and Public Works Committee has scheduled a vote for September 15, 2021, on the nominations for Stephen Owens, Sylvia Johnson, and Jennifer Sass to be added to the Chemical Safety Board (CSB).

EPA enforcement alert

In late July, 2021, EPA issued an enforcement alert that excess volatile organic compound (VOC) emissions were being observed at metal recycling facilities that operate auto and scrap metal shredders. The alert highlighted three recent settlement agreements with automotive scrap recyclers. Prolerized New England Company operates a 9,000 hp shredder in Everett, MA. The state determined that the company

was a major source of VOC emissions and needed to install best available control technology. The company agreed, paid a fine of \$900,000 and installed drop boxes, venturi scrubbers, regenerative thermal oxidizers, and acid gas scrubbers. Simms Metal Management New England Corporation operates a 7,000 hp shredder in Johnston, RI. EPA and the state determined the company had constructed a major new source without obtaining permits and without installing required emission controls. The company paid \$250,000 in federal penalties, \$2 million in state penalties, and added PM controls, a regenerative thermal oxidizer, and acid gas controls. Schnitzer Steel operates a shredder in Oakland, CA. The state has announced a settlement agreement that would require the company to pay \$4.1 million in penalties, implement supplemental projects, and install regenerative thermal oxidizers and acid gas controls by December 2022.

In the past, similar enforcement alerts have signaled EPA's intent for additional enforcement in that sector. It is interesting to note that the actions taken at two of the three companies highlighted in the alert were solely by the state. EPA was not included.

California Department of Toxic Substances Control (DTSC) announced (August 23, 2021) an emergency rulemaking to regulate metal shredding operations under hazardous waste requirements. DTSC determined that its existing exemptions were resulting in improper storage and processing. This appears to be a direct fallout of the enforcement at the Schnitzer Steel facility in Oakland. Schnitzer had been operating under an exemption letter from the state but a superior court judge ordered DSTC to rescind that letter.

IT3 call for abstracts

The next IT3 Conference will be held on May 5-6, 2022, in West Palm Beach, FL. The organizers of the conference have put out a call for papers. Abstracts should be submitted by November 5, 2021. Additional details can be found at <https://www.awma.org/it3>.

Explosion in Leverkusen

On July 27, 2021, there was an explosion and subsequent fire in Currenta's hazardous waste incineration complex in Leverkusen, Germany. The explosion occurred in the tank farm and resulted in seven fatalities and 31 injuries. The damage was confined mostly to the tank farm area but the company states that the entire operation will be inspected before being restarted. Additional information can be found at <https://www.currenta-info-buerrig.de/#wie-es-weitergeht>. The website is in German but your browser should be able to provide enough translation for you to get the gist of the incident and the company's response.

CRWI meetings

Our next meeting will be on November 10-11, 2021. A decision is still pending on whether this will be an in-person meeting or virtual. Please contact CRWI (mel@crwi.org or 703-431-7343) if you have interest in attending.