



## CRWI Update August 31, 2023

### MEMBER COMPANIES

Bayer CropScience  
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  
Westlake US 2, LLC

### GENERATOR MEMBERS

Eli Lilly and Company  
Formosa Plastics Corporation, USA  
3M

### 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  
TEConsulting, LLC  
TRC Environmental Corporation  
Trinity Consultants  
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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### HWC MACT RTR

When the environmental groups (plaintiff) filed their deadline suit on the hazardous waste combustor (HWC) maximum achievable control technology (MACT) risk and technology review (RTR) rule, they asked the court to give the Agency 9 months to sign a proposed rule and 18 months to sign a final rule. In EPA's cross-motion, the Agency asked the court to set a date to sign a final rule of August 14, 2026. The plaintiff's reply was filed on August 18, 2023. In this paper, they reiterated their original position of 9 and 18 months arguing that EPA had not shown it is impossible to meet that timeline. Since the notice of intent to sue was sent to the Agency in August 2022, the reply brief points out that EPA has already had a year to work on this rule. The plaintiff's reply brief argues that EPA has completed other rulemakings in less time. They also point out that EPA should already have all the information needed to complete the rulemaking because each unit has been required to test and reports results since 2008. In addition, the plaintiffs argue that the court should set a deadline for a proposed rule as well as a final rule. The reply brief cites three recent rules without proposed rule deadlines where the Agency proposed a rule about three months before the final rule deadline and then asked for an extension. Unless a settlement is reached before then, EPA will respond on September 8. Then it will go to the judge for a decision.

EPA sent their information collection request to nine companies on August 17, 2023. The nine companies are Ash Grove Cement, BASF Corporation, Blue Cube Operations, LLC (Olin), Clean Harbors El Dorado, LLC, Eastman Chemical Company, Holcim (US) Inc., INV Nylon Chemicals Americas, LLC, Norlite, LLC, and Veolia ES Technical Solutions, LLC. EPA gave the companies 75 days to respond. A copy of the request can be obtained from CRWI.

### Drum management ANPRM

On August 11, 2023, EPA published an Advanced Notice of Proposed Rulemaking (ANPRM) asking for information on used drum management. The reason for the ANPRM is the September 8, 2022, report that indicated multiple incidents (fires, explosions, spills, and leakage) at multiple facilities had caused harm to the

environment. The ANPRM contains a number of questions for both generators and drum reconditioners. Some of the options being considered are:

- Modifying or removing the RCRA empty provisions;
- Require empty drums to meet structural integrity requirements before shipping;
- Strengthen regulatory requirements to ensure drums shipped are RCRA empty;
- Require generators to track or keep records of shipments of empty drums;
- Require labeling on hazards posed by residues;
- Requiring drum reconditioners to develop container management plans and waste analysis plans;
- Requiring drum conditioners to develop financial assurance plans;
- Set emission limits for drum furnaces;
- Require RCRA permit for drum furnaces that burn drums with hazardous waste residue;
- Require RCRA permits for drum reconditioners;
- Require rinsate to be managed in tanks and containers and only be discharged in accordance with sections 301 and 402 or 307 of the Clean Water Act; and
- Prevent sewer discharge of rinsate from drums that previously contained hazardous waste.

Depending upon the information gathered, this may lead to modification of the current regulations on drum recycling. The comment period closes on November 22, 2023.

### **Coke oven RTR proposed rule**

EPA published the coke oven risk and technology review (RTR) proposed rule on August 16, 2023. As proposed, it will require electronic reporting of all test and compliance reports and fence line monitoring for benzene (with root cause and corrective action if action level exceeded). It will add emission limits for hydrogen chloride, hydrogen fluoride, particulate matter metals (lead and arsenic), mercury, and hydrogen cyanide. The demographic analysis was conducted using a 10 km radius. They also eliminated the startup, shutdown, and malfunction provisions and did not appear to add any work practices. Comments are due by October 2, 2023.

### **AERR proposed rule**

On August 9, 2023, EPA proposed to revise the Air Emissions Reporting Requirements (AERR) under 40 CFR Part 51. As currently written, these reporting requirements are restricted to criteria pollutants and are a requirement for the state or local authority, not individual industry facilities. As proposed, the rule would add hazardous air pollutants (HAP) to the list of pollutants reported and require industry as well as the state to report those emissions. The proposed rule does not add any testing requirements, only the requirement that facilities that conduct performance tests report this data electronically. EPA justifies this action because this data will be needed for future risk and technology review rules and to determine if additional pollutants need to be regulated for that

source category. This will be required for certain major and area sources. The proposed rule asks for information on whether the final rule should include reporting requirements for certain per- and polyfluoroalkyl substances even though they are not HAPs. In addition, the proposed rule would add requirements for reporting fuel use data for certain sources of electrical generation associated with peak electricity demand. Comments are due by October 18, 2023.

### **Generator, pharmaceutical, and solid waste rule**

EPA published a direct final and proposed rule making technical corrections to the Hazardous Waste Generator Improvements Rule, the Hazardous Waste Pharmaceuticals Rule, and the Definition of Solid Waste Rule on August 9, 2023. This rule will become effective on December 7, 2023, unless adverse comments are received by October 10, 2023. The primary purpose of this action is to correct errors.

### **PCB final rule**

On August 29, 2023, EPA published a final rule allowing alternative extraction methods for polychlorinated biphenyls (PCB). These changes are expected to reduce the amount of solvent used in the extraction process. In addition, the final rule includes amendments to the disposal options for PCB remediation waste, removal of the provisions to allow PCB waste to be disposed of as roadbed materials, adding flexibility for cleanup and disposal of wastes that are generated during emergency situations, and harmonizing the general disposal requirements for PCB remediation waste. The rule becomes effective on February 26, 2024. Additional details can be found in the *Federal Register* notice.

### **EPA enforcement priorities**

In January, EPA's Office of Enforcement and Compliance Assurance (OECA) proposed to return three enforcement initiatives to the Agency's core programs and replace them with three new initiatives. On August 17, 2023, OECA released a memo that finalized the proposed actions. The three initiatives that will be returned to core programs starting on October 1, 2023, are:

- Reducing toxic air emissions from hazardous waste facilities;
- Stopping aftermarket defeat devices for vehicles and engines; and
- Reducing significant non-compliance within the Clean Water Act permitting program.

The initiatives for FY 24-27 are:

- Mitigating climate change;
- Addressing exposure to per- and polyfluoroalkyl substances (PFAS);
- Protecting communities from coal ash contamination;
- Reducing air toxics in overburdened communities;

- Increasing compliance with drinking water standards; and
- Chemical accident risk reduction.

The first three are the new initiatives. Under the climate change initiative, EPA plans to use criminal and civil authorities to address; 1) methane emissions from oil and gas facilities; 2) methane emissions from landfills; and 3) the use, importation, and production of hydrofluorocarbons. The PFAS initiatives include identifying the extent of PFAS contamination near manufacturing and federal sites using the existing and future authorities under CERCLA, RCRA, the Clean Water Act, and the Safe Drinking Water Act. Communities near coal ash facilities are often environmental justice communities. Thus, two of the initiatives are attempting to address environmental justice concerns. The last three initiatives continue from the FY 20-23 cycle.

### **EPA enforcement**

As a result of several flyovers and inspections, EPA and Mewbourne Oil Company have entered into a consent agreement to control emissions from 422 of the company's oil and natural gas production facilities in New Mexico and Texas. The consent agreement includes a \$5.5 million civil penalty and more than \$1 million in projects to offset earlier emissions. In addition, the company will be required to reduce emissions at every facility and verify those emission reductions using an IR camera.

### **DoD PFAS settlement agreement**

Several environmental groups sued the Department of Defense (DoD) in 2020 over the awarding of three contracts to destroy aqueous film-forming foam (AFFF). Two of the contracts were with Tradebe and one was with Heritage Thermal Services. The two contracts with Tradebe were canceled mid-2020. The suit was moved from California to Ohio in 2022. On August 30, 2023, the plaintiffs and DoD signed a settlement agreement in which DoD canceled the remaining contract with Heritage and agreed to publish on-line all current and future hazardous waste disposal contracts that contain line items for the incineration of AFFF. DoD is to maintain this website for three years. The agreement does not mention any other forms of disposal.

### **Fence line monitoring**

Section 112(d)(6) of the Clean Air Act requires EPA to consider "developments in practices, processes, and control technologies" when they conduct their eight year technology review. When EPA was developing the lead acid battery manufacturing risk and technology review, commenters suggested that fence line monitors should be included. In the final rule, EPA declined to include fence line monitors. Several environmental groups filed suit. Their initial brief was filed on August 31, 2023. In this brief, the plaintiffs argued that the fence line monitors are clearly a "development" as defined in the Clean Air Act and the Agency should have included this requirement in the final rule. They asked the court to require the Agency to re-write the rule to add

fence line monitors. The decision could have significant ramifications for this and other technology review rules.

### **Louisiana LQG closure of central accumulation areas guidance**

Louisiana picked up the Generator Improvements Rule in 2020. Their final rule contained additional provisions for large quantity generator (LQG) closure notification. On August 31, 2023, Louisiana Department of Environmental Quality released guidance on how LQGs in the state can comply with the additional provisions. Until the guidance gets posted on the state website, a copy can be obtained from CRWI.

### **Environmental justice**

On August 7, 2023, EPA announced a \$25,000 grant to the University of Texas at Dallas to provide low-cost calibrated PM sensors to be distributed to Black and Brown communities in the Dallas-Fort Worth area. These sensors are to be calibrated against EPA reference methods, be solar powered, be hooked up to a long-range wireless network, and all data are to be made public. The purpose of the project is to enhance public awareness of PM levels in this area.

On August 14, 2023, EPA announced a \$13 million grant to the Deep South Center for Environmental Justice in New Orleans. This is one of EPA's Environmental Justice Thriving Communities Technical Assistance Centers. The purpose of these funds is to aid community-based organizations throughout the South access federal government funding.

EPA instigated two probes into Louisiana Department of Environmental Quality permitting actions, both based on environmental justice concerns. Louisiana responded by filing suit in district court alleging that EPA had overstepped their authority. In June, EPA filed an administrative closure to the two complaints stating that "EPA will not initiate under Title VI or other civil rights laws any further action, enforcement or otherwise, in response to these Complaints." In July, Louisiana argued that the suit should continue because "EPA is broadly seeking to enforce disparate impact and cumulative impact permitting requirements that are not authorized by any statute..." In an August 16, 2023, filing, EPA asked the court to dismiss the suit arguing that since EPA closed the two probes, there is no reason for the suit to continue.

In 2021, Ajax Materials Corporation asked for a permit to build a new asphalt plant in Genesee Township, MI. This area is zoned for industrial use and has several industries already located nearby including steel fabrication, a powder coating facility, a power plant, another asphalt company, and an automobile recycling yard. It is also adjacent to an environmental justice community in Flint. EPA asked Michigan to deny the permit and force the company to move to another location. But Michigan granted the permit, telling EPA they did not have the authority to deny the permit. Several lawsuits ensued. On August 10, 2023, the EPA and Michigan announced an agreement where EPA would investigate whether Michigan violated the Civil Rights Act when it granted the petition by

failing to provide meaningful participation and whether Michigan's air permitting program has the intent and/or effect of discrimination. Michigan agreed to enhance community engagement, provide a Purple Air sensor for the community for two years, pursue funding for community-led public health assessment, revise and continue air permitting focused education and outreach, update public participation policies, update transparency for permit applications, decisions, inspections, and enforcements, allow input from community groups on a new \$20 million environmental justice grant, and attend quarterly meetings with community groups. The local community groups expressed dissatisfaction with the agreement primarily because EPA backed off from several already agreed upon provisions, because the agreement did not mandate cumulative impact consideration in air permitting, and the failure to clearly outline Michigan's existing authority.

## **PFAS**

As of August 7, 2023, the Department of Defense will require that future contracts use draft Method 1633 for the analysis of per- and polyfluoroalkyl substances (PFAS) in all aqueous matrices except drinking water and that the analysis must be performed at a DoD accredited laboratory under the Environmental Laboratory Accreditation Program. A copy of the memo can be obtained from CRWI.

On August 17, 2023, EPA released summary data from its fifth unregulated contaminant monitoring rule showing that 431 drinking water systems out of 2,002 systems subject to the rule detected PFAS levels above the minimum reporting levels. A copy of the summary document can be found at [https://www.epa.gov/system/files/documents/2023-08/ucmr5-data-summary\\_0.pdf](https://www.epa.gov/system/files/documents/2023-08/ucmr5-data-summary_0.pdf). In addition, the U.S. Geological Survey and the Pennsylvania Department of Environmental Protection released a report (August 22, 2023) on the testing of 161 rivers and streams in the state for 33 different PFAS compounds. The study found that 76% of the water bodies contained at least one PFAS. Additional information can be found at <https://www.usgs.gov/news/state-news-release/pfas-chemicals-detected-many-rivers-and-streams-across-pennsylvania>.

EPA has rescinded the 2019 guidance document for addressing perfluorooctanoic acid and perfluorooctanesulfonate in ground water because it "no longer reflects the best, currently available science." The 2019 guidance used a 70 ppt health advisory levels (HAL) for these two chemicals. EPA is not replacing the guidance but the website (<https://www.epa.gov/pfas/interim-recommendations-addressing-groundwater-contaminated-pfoa-and-pfos>) suggests that sites should be cleaned up using the "best available science." The current HAL level used by the Agency is zero (current detection level is 4 ppt).

The Defense Department has initiated its first cleanup project for PFAS contaminated groundwater at the former Wurtsmith Air Force Base in Oscoda, MI. They will install two groundwater treatment projects designed to halt the flow of contaminated waters into nearby lakes. Additional information can be found at

<https://www.afimsc.af.mil/News/Article-Display/Article/3496338/department-of-defense-announces-pfas-interim-cleanup-actions-at-former-wurtsmit/>.

### **CRWI meetings**

Our next meeting will be on November 8-9, 2023, in Kingsport, TN. Please contact CRWI ([mel@crwi.org](mailto:mel@crwi.org) or 703-431-7343) if you are interested in attending.