



MEMBER COMPANIES

Bayer CropScience
Clean Harbors Environmental Services
Eastman Chemical Company
Formosa Plastics Corporation, USA
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
3M

ASSOCIATE MEMBERS

AECOM
ALL4 LLC
Alliance Source Testing LLC
B3 Systems
Civil & Environmental Consultants, Inc.
Coterie Environmental, LLC
Envitech, Inc.
Eurofins TestAmerica
Focus Environmental, Inc.
Franklin Engineering Group, Inc.
Montrose Environmental Group, Inc.
Ramboll
Spectrum Environmental Solutions LLC
Strata-G, LLC
TEConsulting, LLC
Trinity Consultants
W.L. Gore and Associated, 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

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

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

CRWI Update August 31, 2024

HWC MACT

As of August 31, 2024, the judge had not released his decision on the deadline suit. EPA continues to work on the risk and technology review rule based on issuing an August 2025 proposed rule. Several entities have asked for an extension of the comment period for the malfunctions proposed rule. EPA has not responded as of August 31.

Major source reclassification rule

In 1995, EPA developed a policy that major sources of hazardous air pollutants could switch to area sources at any time before their first date of compliance. If they did not switch by that date, they would remain major sources for the rest of their operational life, no matter what their emission levels were after that date. This was called the “once in, always in” policy. In 2018, EPA replaced that policy with one that allowed major sources to reclassify as area sources at any time as long as their emissions remained below the major source threshold. That policy was codified in 2020. The Biden Administration decided that the 2020 rule would not prevent reclassified area sources from increasing emissions and proposed a rule in 2023 to add restrictions for those sources that reclassified. In that proposed rule, EPA asked for comments on:

1. Whether major sources that are subject to EPA's 90% list should be allowed to reclassify as area sources;
2. Should sources that reclassify remain subject to major source emission limits after they reclassify;
3. Should major sources that reclassify to area sources be required to continue to operate emission controls already in place before reclassification; and
4. Whether any other restrictions for reclassified sources are warranted?

On August 30, 2024, EPA Administrator Regan signed a final rule modifying the current provisions. This action made two changes in the Code of Federal Regulations. The first was to add paragraph 63.1(c)(6)(iii) that does not allow certain source categories to reclassify from major to area source. These are subparts F, G, H, I, L, R, X, CC, GG, II, JJ, KK, LL, MM, EEE, HHH, JJJ, LLL, RRR,

UUU, FFFF, JJJJ, MMMM, PPPP, ZZZZ, CCCCC, DDDDD, FFFFF, IIIII, LLLLL, YYYYY, JJJJJ, and EEEEEEE. This directly addresses point #1 above. The second modifies the notification provisions in 63.9(j) and (k) and adds a new paragraph (k)(3) on submitting confidential business information. It should be noted that the current modifications are not retroactive to sources that reclassified under the 2018 policy. In the preamble, EPA states “The EPA is not at this time requiring sources that have already reclassified to come back into compliance with the relevant NESHAP, as this would involve complicated questions about appropriate compliance schedules among other issues.” This and the other issues from the proposed rule will be addressed in a future rulemaking. A pre-publication copy should be released in early September with publication in the *Federal Register* by mid-month.

EPA air pollution control cost manual

On August 21, 2024, EPA published a notice that Chapter 6, Section 1 of their Air Pollution Control Cost Manual has been updated and requested comments on this update. This section covers fabric filters. The comment period closes on November 19, 2024. Additional details can be found in the *Federal Register* notice.

Hexavalent chromium

EPA released an updated Integrated Risk Information System (IRIS) evaluation of hexavalent chromium. The Agency has been working on this revision since a 2008 study showed that ingestion of hexavalent chromium causes stomach cancer. EPA published drafts in 2010 and 2022 before publishing the final evaluation on August 1, 2024. The revised evaluation sets a total lifetime oral cancer slope factor of 0.26 mg per kg body weight per day. This is approximately half of what was proposed. It also set a reference concentration of 3×10^{-5} mg per cubic meter. Additional details can be found at <https://iris.epa.gov/document/&deid=361833>.

PFAS

In late July, the Senate appropriations committee passed their version of EPA’s funding legislation for FY 2025. In the report that accompanied the legislation, the Committee directed the Agency to use the National Enforcement and Compliance Initiatives and supplemental environmental projects to address per- and polyfluoroalkyl substances (PFAS) contamination. The report also suggested that the Agency quickly remediate Superfund sites contaminated with PFAS.

EPA is starting to include PFAS sampling as a part of Superfund’s five-year review process. This process allows the Agency to determine if new standards should be considered as a part of the protectiveness determination. In some cases, the maximum contaminant levels established under the Safe Drinking Water Act for six PFAS compounds are being used as a guide for the reviews. For sites in Kansas, Maine, Massachusetts, and New Jersey, EPA is using those values to call for additional

sampling. So far, it does not appear that additional cleanup requirements have been required.

North Carolina, New Jersey, and New Mexico sent a letter to EPA Administrator Regan on August 29, 2024, asking the Agency to list perfluorooctanoic acid, perfluorooctane sulfonic acid, perfluorononanoic acid, and HFPO dimer acid as hazardous air pollutants (HAP). EPA recently added 1-bromopropane to the list of HAPs. EPA's current policy is that the emissions of any new HAP will not be regulated until the Agency has gone through a rulemaking process setting MACT emission limits for that pollutant. EPA is currently scheduled to publish a final rule setting up an infrastructure to add additional HAPs in early 2025 that is expected to codify that policy. Should EPA accept the petition to list the four PFAS compounds as HAPs, it would take 1-2 years to finalize the listings and the Agency would then have to go through an additional rulemaking for each of the source categories that emit these HAPs.

Environmental groups and the City of Calhoun, GA have reached a settlement agreement that will require the City to set up wastewater pretreatment limits for PFAS compounds coming from the area's carpet manufacturers. The agreement will set up an independent monitor to oversee the modernization of the industrial pretreatment program to bring it in line with EPA's 2022 guidance. The agreement includes monitoring residential wells and remedial action for those wells impacted by land application of biosludge.

MON decision

When EPA published the 2020 Miscellaneous Organic Chemical Manufacturing (MON) risk and technology review rule, they used the 2016 risk values for ethylene oxide to set revised emission limits. Industry challenged this rule, arguing that the Agency improperly set those risk values by using the wrong models and relying on the wrong data. On August 13, 2024, the U.S. Court of Appeals for the District of Columbia Circuit sided with the Agency. The opinion stated that EPA addressed and rejected industry's arguments on how the risk values for ethylene oxide were set during the rulemaking and this was an example where the courts should defer to EPA's expertise in the data used and the models selected. The opinion made no mention of the recent Loper Bright decision where the Supreme Court overturned the Chevron Doctrine. This could be because the issues had already been briefed before the Loper Bright decision was released or it could be because the court decided that this was an area where they should rely on EPA's expertise instead of industry's expertise. There was no discussion in the opinion on why the court deferred to EPA's expertise other than to say that the petitioners failed to show that EPA's actions were "arbitrary, capricious, or otherwise contrary to law."

CERCLA consent decree

On August 28, 2024, the Department of Justice filed a proposed consent decree with Clean Harbors on the Devil's Swamp Lake Superfund site. The proposed decree would

require Clean Harbors to perform cleanup at the site and pay the U.S. Government over \$2 million for cost occurred in responding to the contamination at the site. The comment period on the proposed decree closes on September 27, 2024. Additional details can be found in the *Federal Register* notice.

OIG report

On August 27, 2024, EPA's Office of Inspector General (OIG) released a report that EPA Assistant Administrator for the Office of Air and Radiation (OAR) Joe Goffman failed to make proper disclosures concerning owning shares in companies that are impacted by OAR rulemakings. The report specifically mentions the miscellaneous coating manufacturing rule, the ethylene oxide sterilizers rule, a 2023 roundtable on the Bipartisan Infrastructure Law and the Inflation Reduction Act, and a review of a hydrofluorocarbon allowance request in 2022. The OIG referred these actions to the civil division of the U.S. Attorney's Office for the District of Columbia. The office initially accepted the referral but declined to follow up with civil proceedings. Mr. Goffman strongly denied the accusations.

Environmental justice

EPA has updated their map of environmental justice communities across the United States using EJSCREEN 2.3. This map was created to help potential applicants identify communities that are eligible to participate in the Environment and Climate Justice program. Additional information can be found at <https://www.epa.gov/environmentaljustice/inflation-reduction-act-disadvantaged-communities-map>.

For the past few years, EPA and the state of Louisiana have been involved in litigation on EPA's ability to use Title VI of the Civil Rights Act to enforce disparate impact rules against an entity in the state. On August 22, 2024, the U.S. District Court for the Western District of Louisiana issued a permanent injunction blocking the Agency's ability to use this law to enforce disparate impact rules in the state. This injunction only applies in Louisiana.

EPA continues to disperse funds allocated by the Inflation Reduction Act. EPA announced \$20 million grants each to Dillard University (Louisiana) and the Houston Health Department to help disadvantaged communities deal with "environmental and climate justice challenges." In addition, the City of New Orleans will receive \$50 million to implement solutions to the "climate crisis." A significant portion of these funds will go to disadvantaged and environmental justice communities. From the climate change portion of the Inflation Reduction Act, EPA has obligated all \$27 billion allocated. EPA's goal was to get most or all of these funds committed before the election to minimize the chance the next Congress would claw back unspent funds.

In 2020, several environmental groups filed a complaint with the Michigan Department of Environment, Great Lakes, and Energy (EGLE) alleging the agency discriminated

against residents that lived near a U.S. Ecology's hazardous waste facility in Detroit. EGLE accepted the complaint and on August 29, 2024, signed a settlement agreement to address the issues raised in the complaint. In the agreement, EGLE agreed that the U.S. Ecology North facility was in an environmental justice community. EGLE agreed to develop an enhanced public participations process for renewals of permits for hazardous waste facilities that would include additional written and oral translations. It will incorporate Title VI of the Civil Rights Act into statewide hazardous waste licensing program and procedures. For permit renewals, the applicant will need to develop an environmental justice analysis which will be reviewed by EGLE. The review will include a cumulative assessment on whether additional restrictions will be required in areas where there are multiple sources of pollutants. As a part of the agreement, EGLE will request U.S. Ecology North update their waste analysis plan and conduct soil sampling of unpaved areas. EGLE will also deploy three Purple Air sensors around the facility. EGLE will post all results on a website. A copy of the agreement and additional information can be found at <https://www.michigan.gov/egle/newsroom/press-releases/2024/08/29/civil-rights-agreement>.

Finally, the trade press is reporting that if elected, Kamala Harris would continue and possible expand the current Administration's policies on environmental justice.

TCEQ Part B application

The Texas Commission on Environmental Quality has revised their Part B application for hazardous waste storage, processing, and disposal facilities. Facilities are required to use the revised application starting on September 1, 2024. If a facility is currently working on a permit, the previous version of the application can be used until September 30, 2024. Additional information and the new application form can be found at https://www.tceq.texas.gov/permitting/waste_permits/ihw_permits/ihw_permit_forms.htm/#permit-applications.

2005 IT3

The next IT3 conference will be held on February 26-27, 2025 in Tulsa, OK. The conference organizers have put out a call for abstracts. Abstracts are due by October 31, 2024. Additional details can be found at https://www.awma.org/ev_calendar_day.asp?date=2/26/2025&eventid=295.

CRWI meetings

Our next meeting will be on November 13-14, 2024 in RTP, NC. It will include discussions on the upcoming HWC MACT RTR proposed rule. Please contact CRWI (mel@crwi.org or 703-431-7343) if you are interested in attending.