



CRWI Update August 31, 2026

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Arcwood Environmental
Arkema, Inc.
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Clean Harbors Environmental Services
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INV Nylon Chemicals Americas, LLC
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INDIVIDUAL MEMBERS

Ronald E. Bastian, PE

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(Includes faculty from:)

Colorado School of Mines
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University of Dayton
University of Kentucky
University of Maryland
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43330 Junction Plaza, Suite 164-641
Ashburn, VA 20147
Phone: 703-431-7343
E-mail: mel@crwi.org
Web Page: <http://www.crwi.org>

HWC RTR litigation

The hazardous waste combustor (HWC) risk and technology review (RTR) rule was published on June 3, 2026. Organizations interested in challenging the final rule had until August 3, 2026, to file those challenges. On the 3rd, five entities (Amrize, the Cement Kiln Recycling Coalition, CRWI, Heidelberg Materials, and a group of environmental organizations lead by Sierra Club) filed petitions for review with the U.S. Court of Appeals for the District of Columbia Circuit. Amrize and Heidelberg Materials are cement manufacturing companies. The next step in the process is for all of the parties to file their list of issues and motions to intervene. At that point in time, all parties will have an idea of which issues each party intends to challenge.

Sierra Club also filed a petition for reconsideration. In this petition, Sierra Club alleged that EPA made two changes between the proposed rule and the final rule where the organization did not have an opportunity to submit comments. The two issues were EPA's decision to not set hydrogen fluoride (HF) emission limits for cement kilns and the decision to set the hydrogen cyanide (HCN) emission limit for new sources on data from dry kilns (wet kilns had the lowest emissions but EPA decided that it was unlikely any new kiln would be a wet kiln). EPA is required to grant a petition for reconsideration if there was no opportunity for a party to comment on the change and if that change is of central importance to the rulemaking. Sierra Club is arguing that since the change took place after the comment period for the proposed rule closed, they had no opportunity to submit comments on that change. They also argued that both were of central importance. EPA could respond by denying the petition saying that the change from proposal to final was a logical outgrowth of comments. If EPA takes that route, Sierra Club would likely challenge that final decision. In the past, EPA has leaned toward granting petitions for reconsideration if they believed the petitioner had a good chance of winning the ensuing challenge of a denial. If the Agency decides to grant the petition, any litigation of this issue would be postponed until EPA reopened the rule for comments and publish another final rule. It is possible that these two issues would be split off and held in abeyance while the rest of the litigation continues. Another option is that the entire litigation could be postponed.

EPA is aware that they have not addressed the 2009 remand of the 2005 HWC MACT final rule. In the 2026 RTR final rule, EPA only addressed the risk and technology requirements and the requirements under the LEAN decision to address unregulated HAPs when conducting a technology review. The risk review did not find a need for more stringent emission limits. EPA added emission limits for HF and HCN for certain source categories based on the LEAN opinion. However, they did not address the 2009 remand. In response, Sierra Club filed a writ of mandamus that asked the Appeals Court to require EPA to address the remand. In the writ, Sierra Club asked the court to give EPA one year to propose a rule addressing the remand and an additional year to finalize that rule. There are a several possible outcomes. One is that EPA can agree they failed to address the remand and agree to address the remand in two years. A variation of that option is they can agree but propose a longer time to complete the rulemaking. On the other hand, EPA can argue that the Appeals Court is not the proper place for a deadline suit and suggest the writ be denied and/or sent to a district court. Just how this will play out will be interesting to watch.

To further complicate the matters, stakeholders have identified at least four areas that will require EPA to publish a technical amendment. These are listed below.

1. Preamble and the regulatory language for the HCN emission limits for the cement kiln source category does not match.
2. In the current definition for boiler shutdown, the beginning of shutdown and the end of shutdown appear to be the same.
3. It is not clear if the September 1, 2026, reporting requirement in 40 CFR 63.1211(f) refer to the start of a performance test, the end of a performance test, or the due date of a performance test report.
4. The requirements in 40 CFR 63.1207(f)(2)(i) for what is to be included in a confirmatory performance test plan conflicts with the regulatory requirements in (g)(2) on what carbon dioxide/total hydrocarbon levels are required during the test.

The requirements in #3 and #4 become effective on September 1, 2026.

EPA has several decisions to make on this litigation. To give themselves a little more time, the Agency submitted a motion to the court asking for an extension of the deadline for the parties to file procedural motions until October 28, 2026. The Agency states that additional time is needed to make decisions on the technical amendment, the filing of petitions for reconsideration, and the writ of mandamus.

PHMSA hazardous substances list

On August 4, 2026, the Pipeline and Hazardous Materials Safety Administration (PHMSA) published a final rule that removed their listing of hazardous substances and reportable quantities in Tables 1 and 2 in Appendix A of 49 CFR 172.101 and replaced it with a reference to EPA's list found in 40 CFR 302.4. In addition, the final rule revises the definitions of "hazardous substances" and "reportable quantities" to match EPA's

definitions. PHMSA did this to improve efficiency and eliminate redundancy. This rule is effective on December 2, 2026.

PFAS

In 2024, EPA finalized a rule that designated perfluorooctanoic acid and perfluorooctane sulfonic acid as hazardous substances under CERCLA. This was the first time a compound has been directly listed as a hazardous substance using the authority in Section 102 of this statute. All previous designations of hazardous substances were made by reference because the compounds were already listed as hazardous under the Clean Water Act, RCRA, the Clean Air Act, or TSCA. An industry group challenged this designation in the U.S. Court of Appeals for the District of Columbia Circuit. The group alleged that:

- EPA misread the authorization under CERCLA to directly designate these two compounds;
- EPA failed to give sufficient notice for the cost-benefit analysis supporting their decision; and
- EPA's cost-benefit analysis was arbitrary and capricious.

On August 18, 2026, the court unanimously denied all of the petitioners claims and upheld EPA's ability to designate these two compounds as hazardous substances under CERCLA. The industry group now has three options. They can let the ruling stand; they can ask for a rehearing en banc (ask all judges in the District of Columbia Circuit to review the decision); or they can appeal the verdict to the Supreme Court. A request for an en banc rehearing is not uncommon in cases like these. It might be a stretch to convince the Supreme Court they should review this ruling.

One thing this opinion does is open up the door for the Agency to add more PFAS compounds to the list of hazardous substances using the same process. In 2023, EPA published an Advanced Notice of Proposed Rulemaking asking for comments on whether the Agency should add seven more PFAS compounds to the list of hazardous substances under CERCLA. This process has been moved to the list of long-term projects without a suggested date for a proposed rule. The August court ruling may modify that schedule.

OIG report on e-manifests

In 2012, the Solid Waste Disposal Act was amended to require EPA to implement a national electronic manifest system. EPA promulgated a rule in 2014 to implement this requirement. It was the goal of the amendment and EPA's subsequent regulation to make the manifest system more efficient and more accurate. That has not worked out exactly as planned. On August 11, 2026, EPA's Office of Inspector General (OIG) released a report on the current effectiveness of the program. The report concluded that the number of electronic manifests increased from 2019 until 2024, but that fewer than 0.5% of the manifests each year are fully electronic. The majority of the manifests

still use paper copies that are manually transcribed into EPA's database. The OIG report identified numerous translational errors including EPA ID numbers and shipping volumes. From 2022 through 2024, about 40% of the Generator ID numbers were invalid and about half of the TSDF ID numbers were invalid. In addition, 800 manifests stated shipping volumes exceeding 1,000 tons, with four stating volumes approaching one million tons. These are probable errors given that it is not feasible for a shipping container to hold 1,000 tons of cargo. Even a few errors of this magnitude can seriously bias any data. The report concluded that many of the inaccuracies were caused by incorrect transcription of the unit of measurement, incorrect transcription of decimal point placement, or incorrect entry of volume not matching the preprinted unit of measurement on the paper manifest. In an effort to reduce these errors, EPA published a rule in 2024 requiring handlers to correct manifests within 30 days of a request for a correction. The OIG report had two recommendations:

- Establish the maximum volume of each container type used to ship hazardous waste, and
- Implement verification checks in the e-Manifest system to identify when shipping volumes likely exceed the maximum capacity of the container type used.

A copy of the report can be found at https://www.epa.gov/system/files/documents/2026-08/epaoig_20260811-26-e-0047_cert.pdf.

On March 5, 2026, EPA proposed a rule to eliminate paper manifest within 24 months of a final rule. The latest regulatory agenda for EPA shows a final rule in January 2027.

CRWI meetings

The next CRWI meeting will be held on October 26-27, 2026, in Salt Lake City, UT, in conjunction with the IT3 conference. Please contact CRWI (703-431-7343 or mel@crwi.org) if you are interested in attending.