



CRWI Update December 31, 2017

MEMBER COMPANIES

Clean Harbors Environmental Services
DowDuPont
Eastman Chemical Company
Heritage Thermal Services
INVISTA S.à.r.l.
3M
Ross Incineration Services, Inc.
Veolia ES Technical Services, LLC

GENERATOR MEMBERS

Eli Lilly and Company
Formosa Plastics Corporation, USA

ASSOCIATE MEMBERS

AECOM
Alliance Source Testing LLC
Amec Foster Wheeler PLC
B3 Systems
Coterie Environmental, LLC
Focus Environmental, Inc.
Franklin Engineering Group, Inc.
METCO Environmental, Inc.
O'Brien & Gere
Strata-G, LLC
SYA/Trinity Consultants
TestAmerica Laboratories, Inc.
TRC Environmental Corporation

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

E-manifest user fee rule signed

On December 20, 2017, EPA Administrator Pruitt signed a rule to implement the electronic manifest system for the shipment of RCRA hazardous waste. EPA will begin accepting e-manifests on June 30, 2018. They have estimated the fees at \$4 per manifest for electronic manifests and \$20 per manifest for paper manifests. These fees may change based on final budgets from Congress. Final fees will be announced 90 days before the effective date. In the final rule, EPA opted to have the receiving facilities pay the fees since there are fewer receiving facilities (approximately 400) than generating facilities (approximately 160,000). The rule includes incentives for companies to move from the paper-based system to the electronic system. It is EPA's goal to completely eliminate the paper-based system within 5 years. If the electronic versions fail to reach 75% by the fourth year, the Agency plans to increase the cost for the paper manifests. EPA also hopes to completely phase out mailed paper submissions within three years.

To address security issues raised by the Department of Defense, EPA is limiting public access to certain wastes flagged based the Department of Homeland Security's Chemicals of Interest appendix. This includes certain P-listed and U-listed wastes. The rule includes enforcement mechanisms should fees not be paid. Penalties include financial claims collection penalties and RCRA civil enforcement actions. The final rule allows corrections to be made while the material is in transit and, in certain circumstances, the use of a hybrid electronic and paper system.

As of December 31, 2017, this rule has not been published in the *Federal Register*. A pre-publication copy can be found at https://www.epa.gov/sites/production/files/2017-12/documents/prepub_finalruleemanifestuserfee.pdf.

Hard rock mining financial responsibility rule dropped

Section 108(b) of the Comprehensive Environmental Responsibility, Compensation, and Liability Act required EPA to identify classes of facilities needing additional financial

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assurance requirements and then to issue those requirements by 1983. The Agency missed that deadline. Environmental groups obtained a court-sanctioned legal agreement with the Obama Administration mandating final action on the hard rock mining sector by December 1, 2017. Under the Obama Administration, the Agency proposed a rule requiring financial assurances on this industry sector and indicating that additional requirements for the chemical, power generation, and petroleum industry sectors would be next. On December 1, 2017, EPA announced they had changed their mind and would not issue a final rule that would require financial responsibility requirements for the hard rock mining industry. EPA stated that additional financial assurance requirements are unnecessary and would create an undue burden on the mining sector. Once this is published in the *Federal Register*, the environmental groups are likely to challenge this decision.

Export/import CBI final rule

On December 26, 2017, EPA published a final rule that no person can claim confidential business information (CBI) for documents relating to the export, import, and transit of excluded cathode ray tubes. EPA proposed to require internet posting of the confirmation of receipt and confirmation of recovery or disposal documents for individual export and imports of hazardous waste. In the final rule, the Agency decided not to include either posting requirement. This rule becomes effective on June 26, 2018. Additional details can be found in the *Federal Register* notice.

Hazardous waste generator workshop

EPA has announced a workshop on the 2016 hazardous waste generator improvements final rule to be held in Arlington, VA on Wednesday, February 7, 2018. The workshop will cover the provisions changed by the rule for hazardous waste determinations, counting hazardous waste, marking and labeling, episodic generation, very small quantity generator waste consolidation at large quantity generators, satellite accumulation areas, emergency planning and preparedness, recordkeeping, and reporting. For additional information, please contact Kathy Lett (lett.kathy@epa.gov) or Mary Beth Sheridan (sheridan.marybeth@epa.gov).

Federal facilities hazardous waste compliance docket

EPA is required by law to maintain a docket containing information on federal facilities that manage hazardous waste or report releases of hazardous substances. They are required to update that list twice a year. The latest update was published on December 8, 2017. In this report, EPA added 21 facilities, deleted nine facilities, and made corrections to 13 facilities. Details can be found in the *Federal Register* notice.

CPP replacement

During a hearing before the House Energy and Commerce Committee, EPA Administrator Pruitt announced that the Agency would be replacing the Clean Power

Plan (CPP) rule. On December 18, 2017, EPA announced an advanced notice of proposed rulemaking (ANPRM) to solicit public input on the next regulatory steps to limit greenhouse gas emissions from existing electric utility generating units. In this notice, the Agency is requesting comments on:

- The role and responsibility of the states in regulating greenhouse gas emissions;
- Can section 111(a)(1) of the Clean Air Act be applied to or at stationary sources;
- How to define the best methods for reducing greenhouse gas emissions;
- How to develop emission guidelines for greenhouse gases for existing power plants (including carbon capture); and
- Potential interaction with other regulatory programs.

Once published in the *Federal Register*, the comment period will be 60 days. After reviewing comments submitted, the Agency may move forward on a replacement rule.

Superfund cleanups

On December 8, 2017, EPA Administrator Pruitt announced a list of 21 Superfund sites that will get “immediate and intense” attention from the Agency in order to resolve long-running impasses with industry and others. The list includes the Portland (OR) Harbor Superfund site, the San Jacinto Waste Pits in Channelview, TX, and the Westlake, MO landfill (radioactive contamination) sites. A complete list can be found at <https://www.epa.gov/superfund/superfund-sites-targeted-immediate-intense-action>.

Mr. Pruitt’s emphasis on cleaning up Superfund sites is starting to see concrete action. On December 18, 2017, EPA announced it had filed two unilateral administrative orders against six companies held responsible for the lead contamination in the Calumet neighborhood of East Chicago, IL. The orders would compel six companies (U.S.S. Lead, Atlantic Richfield Co., DuPont, Chemours, United States Metals Refining Co., and Mueller Industries) to remediate the contaminated soil in one zone and complete indoor dust cleaning in another zone. EPA estimates the cost for the two operations to be more than \$26 million.

EPA personnel

On December 7, 2017, the Senate confirmed Susan Bodine as the next Assistant Administrator for the Office of Enforcement and Compliance Assurance. On December 14, 2017, the Senate confirmed David Ross to be the next Assistant Administrator for the Office of Water and Matt Leopold to be the next General Counsel for EPA. Dr. Michael Doursen has withdrawn his nomination as the next Assistant Administrator for the Office of Chemical Safety and Pollution Prevention. President Trump is expected to nominate someone else for this position in 2018. Clint Woods has been appointed to be the Deputy Assistant Administrator for the Office of Air and Radiation. This position does not require Senate confirmation. Mr. Woods was previously the Executive Director for the Association of Air Pollution Control Agencies. The full Senate has not yet voted

on Andrew Wheeler's nomination to be the next Deputy Administrator. At the end of 2017, EPA has five of the fifteen Senate confirmed positions filled.

Senate rules require that any nomination that has not been acted upon by end of each session (the current session ends on January 3, 2018) be sent back to the White House unless there is a unanimous vote to "hold them over" until the next session (starting January 3, 2018). Traditionally, the Senate has held over the majority of the nominees. For example, eight of President Obama's nominees were sent back to the White House and two of President Bush's nominees were sent back. At the end of December, this Senate agreed to hold over about 150 of President Trump's nominees and to send about 100 back. All the nominations returned to the White House will need to be resubmitted in 2018. Mr. Wheeler's nomination was returned to the White House. President Trump is expected to resubmit this nomination in 2018.

On December 11, 2017, President Trump appointed Anne Idsal to be the Regional Administrator for Region 6. Previously, Ms. Idsal worked for the Texas Regional Land Office. On December 19, 2017, President Trump appointed Cathy Stepp to be the Regional Administrator for Region 5. Ms. Stepp was previously the Principal Deputy Regional Administrator for Region 7. Regional Administrators are now in place for Regions 1, 2, 3, 4, 5, 6, 7, 8, and 10. Region 9 is the only region without a regional administrator.

While the appointment of a regional administrator for Region 5 may have blunted speculation that EPA plans to close that office, a recent submittal to the Office of Management and Budget may be moving that speculation to a different arena. The trade press is reporting that when EPA submitted a re-organization plan in September, it included a plan to close all regional offices and replacing them with smaller offices in each of the 50 states.

Arkema fire

The Arkema chemical plant in Crosby, TX had 19.5 tons of organic peroxides stored at the facility. This material requires refrigeration to prevent ignition. To prevent an incident, Arkema put in three levels of redundancy. Due to heavy rainfall from Hurricane Harvey, all three levels of redundancy failed and the material caught fire. This started a series of lawsuits. The first responder filed suit on September 7 alleging that they were not made aware of the dangerous properties of the material. On October 3, 2017, a class action lawsuit was filed in the U.S. District Court for the Southern District of Texas alleging that Arkema could have prevented the incident "with better precautionary measures, compliance with applicable regulations, and the use of reasonable care." Several groups have argued that this is exactly the reason the risk management plan rule promulgated by the Obama Administration should be implemented immediately. The latest is a suit filed in the U.S. District Court for the District of Columbia alleging that the Chemical Safety Board (CSB) has failed to promulgate rules requiring industrial facilities to report chemical releases following an incident. The Obama Administration considered such an action in 2009 but decided

that any such reporting requirement could duplicate existing requirements from EPA and OSHA. In addition, the CSB told EPA's Inspector General in 2016 that a reporting rule was not needed because it already receives adequate release information. The latest suit asks the court to instruct CSB to craft a rule within 18 months that requires reporting emissions after an incident.

Enforcement

On December 6, 2017, the former general manager of Volkswagen's U.S. Environment and Engineering Office was sentenced to 84 months in prison for his role in the scheme to sell diesel cars that contained software designed to cheat on U.S. emissions tests. Oliver Schmidt, a German citizen, had pleaded guilty on August 4, 2017, to one count of conspiracy to defraud the United State, to commit wire fraud, and to violate the Clean Air Act, and one count of violating the Clean Air Act. In addition, he was ordered to pay a \$400,000 criminal penalty.

On December 14, 2017, David Allen Smith, the co-owner of Explo Systems, Inc., pleaded guilty to one count of criminal conspiracy and one count of making a false statement concerning the recycling of munitions in Camp Minden, LA. Explo Systems' primary business was the demilitarization of military munitions and the subsequent resale of the recovered materials to the mining industry. The mismanagement of the materials led to an explosion of approximately 124,200 pounds of smokeless powder and 42,200 pounds of M6 propellant that shattered windows up to four miles away and derailed 11 rail cars near the storage igloo. Mr. Smith pleaded guilty to conspiring with others to prevent proper monitoring of the operations at Camp Minden and to submit false end use certificates in order to obtain payments to which he was not entitled. Mr. Smith faces five years in prison, three years of supervised release, and a \$250,000 fine for each count. As part of the plea agreement, Mr. Smith agreed he owes restitution of \$35,398,761.

There was a recent article in the New York Times (December 10, 2017, <https://www.nytimes.com/2017/12/10/us/politics/pollution-epa-regulations.html>) suggesting the current administration has significantly reduced enforcement actions. While their statistics may be correct, they may also be misleading. Enforcement actions take a long time come to fruition. Any actions taken this early in the Trump Administration are most likely the result of work started in the Obama Administration rather than any new actions. Most observers believe that it is difficult to gauge the effectiveness of a particular enforcement program without two to three years of data. While there is little doubt that the Trump Administration is approaching regulations much differently than did the previous administration, just how that will translate into enforcement has yet to be determined.

IT3 conference

Registration for the next IT3 conference (March 6-8, 2018, Houston, TX) is now open. The preliminary program, keynote speakers, session topics, professional tours, technical tours, and registration information can be found at <https://www.awma.org/it3>.

CRWI meeting

The next CRWI meeting will be held on February 21-22, 2018, in Deer Park, TX. It will feature a tour of Clean Harbors Deer Park facility. For additional information, contact CRWI (mel@crwi.org or 703-431-7343).