



CRWI Update December 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>

PFAS

On December 6, 2021, California listed perfluorooctane sulfonate (PFOS) and its salts as “known to the state to cause cancer.” On December 14, 2021, California listed perfluorononanoic acid and its salts as a reproductive toxin. During the same meeting, California declined to list perfluorodecanoic acid. All of these designations were made under the state’s Proposition 65 toxics warning law.

On December 8, 2021, the White House issued an executive order on “Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability.” The Office of Management and Budget issued an accompanying memo explaining how this was to be implemented. This memo encourages agencies to “prioritize substitutes for products that contain perfluoroalkyl or polyfluoroalkyl substances (PFAS). To the maximum extent practicable and consistent with statutory mandates, agencies should avoid the procurement of PFAS-containing covered items...”

During the Science Advisory Board meetings in December 16, 2021, EPA stated they are trying to decide whether to set numerical drinking water limits or treatment standards for perfluorooctanoic acid (PFOA) and PFOS. EPA typically uses treatment standards when there is no reliable way to measure contaminants at the levels where there are no public health concerns. This discussion is prompted by the recent draft reference dose concentrations for PFOA and PFOS that would lead to maximum contaminant level goals in the range of 0.006 ppt for PFOA and 0.030 ppt for PFOS. These meetings will continue on January 4, 6, and 7, 2022.

On December 27, 2021, President Biden signed the FY 2022 National Defense Authorization Act (NDAA). This legislation contains a temporary moratorium on the incineration of Department of Defense (DoD) PFAS waste and aqueous film forming foam (“covered material”). Beginning 120 days after the date of signature, DoD cannot use incineration of covered materials until one of two things happen. One is the Secretary of Defense issues guidance on the destruction and disposal of materials containing PFAS. The other is that EPA publish a final rule regarding the destruction and disposal of PFAS waste. Once EPA published a final rule, DoD must adopt that rule even though they have previously issued

guidance. In addition, within one year after enactment and every three years thereafter, DoD shall submit a report to Congress on all incineration of covered materials. This report will include:

- The total amount of covered materials incinerated;
- The temperature range specified in the permit where the covered materials were incinerated;
- The locations and facilities where the covered materials were incinerated;
- Details on actions taken by the Department of Defense to implement the requirements on incineration of PFAS waste from the FY 2020 NDAA; and
- Recommendations for the safe storage of PFAS and PFAS-containing materials prior to destruction and disposal.

This report not only includes direct shipments from DoD but all shipments through any other entity prior to incineration.

On-site inspection procedures rescinded

The Biden Administration is continuing to revise, modify, or rescind Trump Administration rules. The latest is a December 30, 2021, direct final rule that rescinds the 2020 rule that set up procedures for how EPA inspectors conduct an on-site civil inspection. The 2020 rule was codified in 40 CFR 31. The December 30 rule removed Part 31. EPA justified this action because it reduced flexibility stating that the “procedures for inspections must be adaptable to the site-specific conditions...” They also decided the 2020 rule was unnecessary. The change was effective immediately.

RCRA public notifications proposed rule

On December 16, 2021, EPA proposed a rule to allow electronic alternatives for RCRA public notification provisions. For applicants, RCRA Subtitle C requires public notification in a local newspaper, radio broadcast, public roadway signage, an information repository, and a pre-application meeting. For EPA, the Subtitle requires public notification in a local newspaper and to a mailing list. At the heart of this notice is the fact that local newspapers are no longer available in a number of locations. EPA is looking for potential methods to provide the same or similar outreach to the local community. They quote several sources that argue that more people gather their news from various online sources than from printed newspapers. They also point to state inquiries on how to meet the requirements when there are no local newspapers. The Office of Air and Radiation and the Office of Water already allow the use of internet postings to satisfy public notice requirements. The basic problem is that the statutory language in 42 U.S.C. 6974(b)(2)(A) specifically states that the Administrator shall “cause to be published in major local newspapers of general circulation and broadcast over local radio stations notice of the agency’s intention to issue such permit...” This does not leave EPA with many options unless the Agency can change the definitions of “major local newspapers.” EPA states there is no reason that an online publication

cannot meet these criteria. They also look to expand this to online bulletins or state newsletters.

There are no regulatory language changes proposed. What EPA is asking for is comments or legal opinions that the use of online newspapers, bulletins, and/or state newsletters will meet the statutory requirements of “major local newspaper.” They also ask if these notifications could be used for Class 3 modifications, permit modifications requested under 40 CFR 270.42, requirements to list annual permit modifications approvals, permit denials, and any other newspaper notice under Subtitle C. Comments are due on February 14, 2022.

E-Manifest advisory board nominations requested

On December 14, 2021, EPA published a request for nominations to their Hazardous Waste Electronic Manifest System Advisory Board. They are specifically looking for an expert in information technology, an industry representative with experience using the current E-manifest system, and a state representative. Nominations will be accepted until January 13, 2022.

Consent decree on SOCM I source categories

On December 7, 2021, EPA published a proposed consent decree that would require EPA to review and if appropriate, revise the New Source Performance Standards for four source categories under the synthetic organic chemical manufacturing industry (SOCMI). It would also require review and revision of NESHAP standards for these four source categories. If finalized, the decree would require EPA to propose a rule by December 16, 2022, and finalize that action by March 29, 2024. The Department of Justice will accept comments on the proposed decree until January 7, 2022.

1-BP listed as a HAP

When Congress passed the 1990 amendments to the Clean Air Act, paragraph 112(c)(1) set up a list of 189 chemicals they deemed as hazardous air pollutants (HAP). Paragraph 112(c)(2) gives EPA the authority to delete or add substances to that list. On December 22, 2021, EPA Administrator Regan signed a final rule to list 1-bromopropane (1-BP) as a HAP. EPA has removed four chemicals from the list but this is the first time they have added a chemical. This notice will add a new paragraph 40 CFR 63.64 that simply states that 1-BP is added to the list of HAPs. EPA states that this action is not a final action and as such is not judicially reviewable. The addition becomes effective 30 days after the notice is published in the *Federal Register*.

All this notice does is add 1-BP to the list of HAPs. Now EPA must amend their list of source categories to include all sources that release 1-BP to the atmosphere. Once that is done, EPA must develop technology based standards for 1-BP for all of these source categories. All of this is fairly straight forward for the two source categories EPA has already identified. However, if EPA determines there are other source categories

that already have standards for other HAPs emit 1-BP, the process gets more complicated. For example, if adding a new HAP moves a source category from being an area source to a major source, this would prompt the change in that source's regulations to Maximum Achievable Control Technology instead of Generally Achievable Control Technology (GACT). GACT is typically a less stringent requirement.

EPA understands this and is developing an infrastructure on how to accomplish the rest of the process. They plan to release a draft in April 2022. Since EPA has decided to consider listing all or certain PFAS compounds as HAPs in the near future, having an infrastructure in place to accomplish this task will make that process more consistent.

Superfund cleanup projects announced

In November, President Biden signed a \$1.2 trillion infrastructure bill. This legislation included over \$3 billion for Superfund cleanups. On December 17, 2021, EPA announced that \$1 billion of those funds would be spent to initiate cleanup and clear the backlog at 49 Superfund sites. Sites in 24 states and all regions are included in the list. EPA states that 60% of these are in "historically underserved communities." A complete list of the sites can be found at <https://www.epa.gov/superfund/superfund-sites-new-construction-projects-receive-bipartisan-infrastructure-law-funding>.

EPA grants for novel technologies

EPA's Small Business Innovation Research Program runs an annual two-stage competition for funding. On December 14, 2021, the Agency announced the winners for this year. Thirty companies will be receiving up to \$100,000 for phase I (proof of concept) with the possibility of up to \$400,000 to further develop and commercialize their technology (phase II). The grants for air monitoring include:

- Low level, rapid analysis for ethylene oxide in ambient air;
- A spectroscopy system to detect volatile organic compounds in real time;
- A sorbent trap system for monitoring metal hazardous air pollutants; and
- A laser technology for continuous methane monitoring.

A complete list of the projects funded can be found at <https://www.epa.gov/newsreleases/epa-announces-over-3-million-funding-small-businesses-develop-environmental>.

Environmental justice

Also included in the November infrastructure legislation was \$50 billion for drinking water and waste water treatment systems. In December, EPA released \$7.4 billion. In a letter to the states, EPA Administrator Regan urged governors to target these funds toward disadvantaged communities, prioritize replacement of lead drinking water service lines, and addressing PFAS water contamination.

On December 13, 2021, EPA announced an open competition for \$20 million in grants to enhance ambient air quality monitoring in communities with a special emphasis on underserved and overburdened communities. To be considered for these grants, an applicant must address either criteria pollutants and their precursors or hazardous air pollutants. Applications are due by February 25, 2022. Additional information can be found at <https://www.epa.gov/grants/enhanced-air-quality-monitoring-communities>.

In addition, EPA announced (December 15, 2021) \$14.1 million in environmental justice grants to 133 organizations. Ninety nine will receive up to \$75,000 each and the other 34 will receive up to \$200,000 each. These grants were awarded in 37 states as well as the District of Columbia and Puerto Rico. They will cover environmental justice issues associated with the COVID pandemic, air monitoring, indoor/outdoor air quality, food access, community planning, green jobs, and others. A complete list can be found at https://www.epa.gov/system/files/documents/2021-12/2021-selected-ejsg-project-descriptions_0.pdf.

On December 7, 2021, the Virginia Air Pollution Control Board voted to deny a permit for a compressor station for the Mountain Valley Pipeline finding that the permit failed to meet environmental justice requirements. The station in question is within five miles of four African American and American Indian communities, all of which are considered to be environmental justice communities. Last month, Michigan approved a permit for a hot asphalt plant to be built near an environmental justice community even though U.S. EPA asked them to reconsider the location. Michigan responded that they had no authority to deny the permit. In December, environmental groups and fair housing groups filed a civil rights complaint asking the federal Department of Housing and Urban Development to investigate allegations of discrimination against Michigan housing officials for their role in allowing the new plant to be located near two public housing complexes.

Enforcement

On December 21, 2021, the Department of Justice published a proposed consent decree with the City of Woonsocket (RI). The city is an owner/operator of a sewage sludge incinerator. The complaint included failure to submit monthly reports, a final control plan, and a site-specific monitoring plan; failure to perform required testing; failure to meet emission limits for sulfur dioxide and hydrogen chloride; and failure to establish and meet emission limits. The decree would require the city to correct these failures and pay a \$373,660 civil penalty.

EPA personnel

President Biden announced three more EPA regional administrators. Earthea Nance is the new Region 6 Administrator. Dr. Nance was an Associate Professor of urban planning at Texas Southern University. Meg McCollister is the new Region 7 Administrator. Ms. McCollister was a campaign advisor and strategic thinker on environmental, health and social improvement initiatives. Martha Guzman is the new

Region 9 Administrator. Ms. Guzman was a member of the California Public Utilities Commission. The only two regional administrators not yet appointed are for Regions 1 and 10.

On December 1, 2021, the Senate Environment and Public Works Committee favorably reported the nominations of Chris Frey, David Uhlman, and Amanda Howe to be EPA assistant administrators. Dr. Frey is nominated to be the next Assistant Administrator for the Office of Research and Development. He has been working in that office as a special assistant since February. Prior to that he was a professor of environmental engineering at North Carolina State University. Mr. Uhlmann is nominated to be the next Assistant Administrator for the Office of Enforcement and Compliance Assurance. Mr. Uhlman is a former Department of Justice enforcement chief. Ms. Howe is nominated to be the Assistant Administrator for the Office of Mission Support. Ms. Howe headed Kamala Harris' presidential campaign. All three have been placed on the Senate calendar. The nomination of Carlton Waterhouse to be the next Assistant Administrator for the Office of Land and Emergence Management was not favorably reported. Chairman Carper (D-DE) indicated he would attempt to discharge that nomination to the Senate Floor using other means.

CSB nominations

On December 9, 2021, the Senate confirmed Stephen Owens and Sylvia Johnson to five year terms at the Chemical Safety and Hazard Investigation Board (CSB). Mr. Owen previously was the director of the Arizona Department of Environmental Quality and Ms. Johnson was an epidemiologist at the United Auto Workers. The Senate did not take up the nomination of Jennifer Sass. CSB now has three of the five Board positions filled.

SSM litigation restarted

EPA asked the U.S. Court of Appeals for the District of Columbia to restart the litigation over its 2015 rule that required 36 states to remove startup, shutdown, and malfunction (SSM) provisions in their state implementation plans. On December 17, 2021, the court granted that motion and allowed supplemental briefs. Industry supplemental briefs are now due on January 3, 2022. EPA will submit their supplemental brief on February 2, 2022, and environmental groups opposed to the exemptions will file their supplemental brief on February 9, 2022. The court has not yet set a date for oral arguments.

CRWI meetings

Our February 16-17, 2022, meeting will be virtual. Please contact CRWI (mel@crwi.org or 703-431-7343) if you have interest in attending.