



CRWI Update December 31, 2022

MEMBER COMPANIES

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

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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Site remediation final rule

In the initial site remediation NESHAP rule, EPA excluded sites where remediation was being carried out under either RCRA or CERCLA programs. Their reason was that the actions carried out under these two environmental statutes were functionally equivalent to Clean Air Act requirements. This was challenged and after several starts, EPA published a final rule on December 22, 2022, that removed this exclusion. EPA's most recent logic is that the Clean Air Act does not give them the authority to defer to other environmental statutes. Facilities that have used this exemption will have 18 months to come into compliance with the air emission limits in Part 63 Subpart GGGGG. EPA is deferring the question of setting emission standards for non-organic hazardous air pollutants for this source category to a future rulemaking.

TRI de minimis exclusions proposed rule

On December 5, 2022, EPA proposed a rule to remove the de minimis exclusions for per- and polyfluoroalkyl substances (PFAS) compounds in mixtures. The current regulations allow facilities to disregard mixtures containing less than 1% for all PFAS compounds and 0.1% for PFAS compounds that are carcinogenic when making a calculation to determine if the TRI reporting threshold has been reached. To accomplish this, EPA is proposing to add all PFAS compounds to the list of chemicals of concern and to remove the availability of the de minimis exemptions for the purpose of the supplier notification requirements for all chemicals in the list of chemicals of special concern. The proposed rule would keep the 100 pound threshold for PFAS. EPA did not propose a definition for PFAS in this action. Comments are due February 3, 2023.

OB/OD webinar

On December 5, 2022, EPA's Office of Resource Conservation and Recovery held a webinar on their plans to issue a proposed rule regulating the use of open burn/open detonation (OB/OD). Additional information and a copy of the slides can be found at <https://www.epa.gov/hwpermitting/revisions-standards-open-burning-open-detonation-waste-explosives>.

Hand sanitizer

A couple of years ago, hand sanitizer was difficult to find and EPA eased the restrictions to allow more companies to produce it. A number of institutions started stockpiling it to avoid future shortages. Some of that material is now reaching its expiration date and companies are asking EPA for guidance on disposal options. In addition, at least one warehouse holding hand sanitizer caught fire. In response, EPA released a memo (November 17, 2022) on how RCRA regulations apply to this material. The memo outlines five scenarios and explains what RCRA regulations apply. These are:

- Burned for energy recover (Part 266, Subpart H);
- Used in a manner constituting disposal (Part 266 Subpart C);
- Reclaimed to produce alcohol and the alcohol is burned for energy recovery (Part 266 Subpart H) or used in a manner constituting disposal (Part 266 Subpart C);
- Reclaimed to produce alcohol that is used in a product (not a solid waste and is excluded from RCRA Subtitle C); or
- Industrial ethyl alcohol that is reclaimed is not regulated as a hazardous waste.

A copy of the memo can be found at RCRA online (search for 14953).

FY 2023 EPA appropriations

Congress passed an omnibus appropriations bill for FY 2023 in time for the President to sign it before the continuing resolution expired at midnight on December 23, 2022. EPA will receive \$10.1 billion for this fiscal year. This is \$1.8 billion less than requested but \$576 million more than in FY 2022. The majority of these increases are equally spread across the program offices.

CSB personnel

On December 13, 2022, the Senate confirmed the nomination of Steve Owens as the Chairman of the Chemical Safety and Hazards Board (CSB) and the nomination of Catherine Sandoval as a board member. This fills three of the five positions on the Board.

Boiler remand litigation

EPA published the final boiler remand rule on October 6, 2022. U.S. Sugar quickly filed a petition for review with the U.S. Court of Appeals for the District of Columbia Circuit. Early in December three other industry trade groups and one environmental group filed petitions for review and these were consolidated with the Sugar petition. In addition, EarthJustice filed a petition for reconsideration. Petitions for review do not include issues that petitioners plan to raise but often petitions for reconsideration give a hint to the issues of concern. EarthJustice's petition asked EPA to reconsider using carbon monoxide as a surrogate for non-dioxin organic hazardous air pollutants, the 130 ppm

carbon monoxide threshold, and requested EPA include standards for polychlorinated biphenyls.

FY 2023 NDAA

Congress passed the FY 2023 National Defense Authorization Act (NDAA) and the President signed it on December 23, 2022. The final bill removed most of the PFAS issues from the House version but retained the ban on using incineration to destroy PFAS wastes. During the debate, Senator Joe Manchin (D-WV) attempted to add his list of permitting reforms to the legislation. It lacked the necessary 60 votes in the Senate and was not included in the final package. The Department of Defense has not released their guidance document on the destruction of PFAS wastes.

Enforcement

EPA has reached a settlement agreement with Container Life Cycle Management LLC to address Clean Air Act and RCRA violations at three locations in Wisconsin. The agreement requires the company to install and continuously operate a regenerative thermal oxidizer to control air emissions at their St. Francis facility, install and operate a temperature recording system in their Oak Creek drum reclamation furnace afterburner and maintain a temperature at or above 1,650 degrees, modify their storage of non-empty drums, and pay a \$1.6 million civil penalty.

EPA announced a Consent Agreement and Final Order with TForce Freight Inc. to resolve non-compliance with multiple hazardous waste regulations at 174 facilities in 39 states. The agreement resolves failures to make hazardous waste determinations when certain products are damaged and failure to conduct proper on-site management of hazardous waste. The company will have 36 months to come into compliance and will pay a \$860,400 civil penalty. The press release also mentions that the agreement will benefit “communities overburdened by pollution.”

EPA has reached an agreement with Denka Performance Elastomer, LLC over disposal of “poly kettle strainer waste.” In April and May of 2022, an EPA inspector observed the company transferring this material to an open-air brine pit and measured elevated chloroprene levels nearby. Starting January 31, 2023, Denka will stop this transfer to the brine pit and instead meet hazardous waste regulatory requirements for both the pit and the ultimate disposal of the wastes. Denka must also use EJSSCREEN when choosing a disposal facility and consider using low-emission vehicles for transporting the waste for disposal.

In mid-December, the Office of Enforcement and Compliance Assurance released their FY 2022 report (<https://www.epa.gov/enforcement/enforcement-and-compliance-annual-results-fiscal-year-2022>). Some of the highlights listed include:

- Over 56% of on-site inspections were at facilities affecting communities with potential environmental justice concerns;

- Finishing approximately 1,650 civil judicial and administrative cases, 44% of the facilities were in areas with potential environmental justice concerns;
- Completed a total of 150 on-site inspections in addition to four off-site investigations; and
- Concluded 20 formal enforcement cases that returned 21 facilities to compliance, 99% of the emission reductions were from facilities located in overburdened communities and 50% involved facilities located in overburdened communities.

The Agency was criticized by environmental groups for failing to close enough civil cases (72 which was the lowest number since FY 2000), failing to refer an adequate number of cases to the Department of Justice (88 which was the second lowest in the past 20 years), and failing to initiate enough criminal cases (117 which was the second lowest on record).

PFAS

On December 5, 2022, EPA's Office of Water sent a memo to the regions providing guidance on how to incorporate per-and polyfluoroalkyl substances (PFAS) monitoring into NPDES permits. The memo encourages the regions to use draft method 1633 to monitor PFAS concentrations in wastewater releases, use best practices to reduce or eliminate PFAS in systems with NPDES permits, address PFAS containing firefighting foams in stormwater permits, and consider site-specific permit limits based on best professional judgement. A copy can be found at <https://www.epa.gov/newsreleases/epa-issues-guidance-states-reduce-harmful-pfas-pollution>.

On December 15, 2022, EPA published a final rule that incorporates ASTM E1527-21 standard practice into the Agency's "Standards and Practices for All Appropriate Inquiries." This standard contains a footnote that suggests including PFAS and other emerging contaminants if states define them as "hazardous substances" and users want state liability defenses. It will also impact any entity performing assessments for Superfund and brownfield sites.

EPA has sued (December 19, 2022) Inhance Technologies in the U.S. District Court for the Eastern District of Pennsylvania. Inhance is a manufacturer of containers using a plastic fluorination process. EPA is claiming that the process produces perfluorooctanoic acid and other long-chain PFAS in violation of significant new use rules under TSCA. EPA sent the company a subpoena in 2021 and a notice of violation on March 1, 2022. EPA is asking the court to block Inhance from producing fluorinated plastic containers until they have completed a significant new use notice under TSCA. The suit also asked the court to stop the company from distributing containers already produced.

EPA has released (December 22, 2022) its final Integrated Risk Information System review for perfluorobutanoic acid (PFBA). The assessment found evidence that development, thyroid, and liver effects in humans is caused by in utero or adult

exposure. There were no studies identifying PFBA as a carcinogen. EPA set a reference dose of 0.006 mg/kg-day for this compound.

Environmental justice

On December 22, 2022, EPA's Office of Air and Radiation released guidance for including cumulative impacts and environmental justice into Clean Air Act permits (<https://www.epa.gov/caa-permitting/ej-air-permitting-principles-addressing-environmental-justice-concerns-air>). There are eight principles listed and they often reference specific questions in the "Interim Environmental Justice and Civil Rights in Permitting Frequently Asked Questions (FAQ)." The eight principles are;

1. Identify communities with potential environmental justice concerns using EJSCREEN;
2. Promote meaningful participation by engaging early in the permitting process;
3. Enhance public participation when the permit may result in high adverse human health effects or include an environmental justice community;
4. When a permit will result in high adverse human health effects or include an environmental justice community, conduct the analysis to ensure fair treatment ("fit for purpose");
5. Minimize and mitigate disproportionate adverse effects to promote fair treatment;
6. Provide federal support for environmental justice communities throughout the permitting process;
7. Enhanced transparency; and
8. Build capacity to enhance the consideration of environmental justice in the air permitting process.

The guidance and cover memo were sent to the regions encouraging them to incorporate these principles in all Clean Air Act permit actions.

One of the major challenges for EPA in the environmental justice arena will be to properly distribute the \$3 billion Congress has provided in the Inflation Reduction Act. These funds must be used by September 30, 2026 or they revert to the U.S. Treasurer. The majority of these funds are pass through but EPA will need to develop a system to maximize the use of this money before the deadline. The first phase is to award \$ 480 million using pass-through funders, each getting about \$50 million. These funders will be required to pass on at least 80% of the funds given to them. These groups must be a community-based non-profit organization (CBO), a partnership of CBOs, a partnership of an Indian tribe and a CBO, or a partnership of a higher education institute and a CBO. These entities will award both competitive and non-competitive grants. These include awards of \$150,000 for one-year assessment work, \$200,000 for planning over one to two years, and \$75,000 non-competitive awards for six months to one year for severely capacity-constrained CBOs.

The Inflation Reduction Act also included funding for a number of monitoring programs. These include \$117.5 million to deploy, support and maintain fence line monitors, \$50

million to expand the ambient air quality monitoring network, \$3 million to purchase, deploy, integrate, and operate air quality sensors in low-income and disadvantaged communities, and \$25 million to update EPA's Integrated Compliance Information System. Additional details on these and other Inflation Reduction Act programs can be found at <https://www.whitehouse.gov/wp-content/uploads/2022/12/Inflation-Reduction-Act-Guidebook.pdf>).

CRWI meetings

Our next meeting will be on February 15-16, 2023, in Deer Park, TX. Please contact CRWI (mel@crwi.org or 703-431-7343) if you have interest in attending.