



MEMBER COMPANIES

Bayer CropScience
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
Westlake US 2, 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
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
TRC Environmental Corporation
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

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CRWI Update December 31, 2023

HWC MACT RTR

As of December 31, 2023, the judge in the deadline suit has not released a decision. EPA is continuing to work on the rule based on their timetable for releasing a proposed rule in August 2025 and a final rule in August 2026.

EPA hosted a discussion on phase 2 of the Information Collection Request (testing protocol) on December 6, 2023. Comments on the draft protocol were due on December 15, 2023. The Agency has indicated that the request for testing will be sent to nine companies in January 2024. They have not identified the nine companies.

Generator improvement direct final rule withdrawn

In August, EPA published a direct final rule making technical corrections to the Hazardous Waste Generator Improvements rule, the Hazardous Waste Pharmaceutical rule, and the Definition of Solid Waste rule. The Agency received adverse comments on eight amendments included in the direct final rule. On December 6, 2023, EPA withdrew those eight amendments. All other changes remain in place. For the eight amendments, the Agency will develop responses to the comments and possibly modify those provisions based on comments received. No additional comment period will be given. Details on the process and the eight amendments withdrawn can be found in the *Federal Register* notice.

Guidance on using environmental justice in regulatory analysis

EPA released the draft revisions to the *Technical Guidance for Assessing Environmental Justice in Regulatory Actions* on November 15, 2023, with the comment period ending on January 15, 2024. This was reported in the November Update. On December 28, 2023, EPA extended the comment period to January 30, 2024.

PFAS

EPA has alleged that the process used by Inhance Technologies to produce fluoropolymer containers produces PFAS impurities that can leach into the products stored in the containers. On December

1, 2023, EPA ordered the company to stop production by February 28, 2024. Inhance Technology challenged this order in the U.S. Court of Appeals for the Fifth Circuit. On December 12, 2023, the court granted the motion to stay the order and to expedite briefing on the challenge.

In their November meetings, the International Agency for Research on Cancer declared that perfluorooctanoic acid (PFOA) is carcinogenic to humans and perfluorooctane sulfonic acid (PFOS) is a possible carcinogen. EPA has already classified both as likely carcinogens.

The Office of Management and Budget (OMB) released two proposed rules pertaining to per- and polyfluoroalkyl substances (PFAS) in December. The proposed rule to clarify that the definition of hazardous waste found in RCRA section 1004(5) is applicable to corrective action for releases from solid waste management units was released on December 5, 2023. The proposed rule to list PFOA, PFOS, perfluorobutane sulfonic acid (PFBS), and hexafluoropropylene oxide dimer acid (Gen-X) as hazardous constituents under Appendix VIII was released on December 21, 2023. As of December 31, 2023, neither of these proposed rules have been released to the public. They should be released in early January. EPA also sent a final rule to designate PFOA and PFOS as hazardous substances under CERCLA to OMB on December 6, 2023. In addition, the Agency sent a final rule to set Maximum Contaminant Levels (MCL) for six PFAS compounds to OMB on December 15, 2023. EPA proposed an MCL of 4 ppt for PFOA and PFOS and a hazard index of 1.0 for Gen-X, perfluorononanoic acid, perfluorohexane sulfonic acid, and PFBS. OMB typically takes 90 days to review a rule but the PFAS rules have been taking up to six months to clear.

In the FY 2021 National Defense Authorization Act (NDAA), Congress set up a prize program for developing a non-PFAS-containing aqueous film-forming foam (AFFF). In the FY 2023 NDAA, Congress expanded the program to include certain fire-fighting equipment. In the FY 2024 NDAA (H.R. 2670, signed into law on December 22, 2023), Congress added a third category – thermal destruction of PFAS. Congress authorized \$1 million in FY 2024 for the third category. To understand Congress' intent, one needs to look at the House Armed Services Committee report (H. Rept. 118-125) which states

“This section would authorize the Secretary of Defense to carry out a pilot program that uses thermal destruction to dispose of PFAS materials.”

Thus, DoD is authorized to spend \$1 million to carry out a pilot program to use thermal destruction to dispose of PFAS materials. These funds will not be available until the Congress passes FY 2024 funding legislation for DoD.

EPA and Chemours have reached a settlement agreement where the company will sample PFAS contamination around their Parkersburg, WV facility. The administrative order on consent will require the company to sample for PFAS compounds in soil, surface water, sediments, groundwater, and certain waste streams from the facility.

The state of Washington has developed a draft environmental impact statement to assess the potential adverse impacts to various methods of treating or disposing of AFFF. The draft looks at potential impacts from the collection, transport, and disposal of AFFF collected from the municipal fire departments in the state. Five AFFF collections and disposal options are evaluated. They are solidification and landfilling, deep well injection, incineration, approved leave in place, and no action. Comments will be accepted until February 5, 2024. Additional details can be found at https://ecology.wa.gov/events/hwtr/aff-draft-eis/public-comment-period?utm_medium=email&utm_source=govdeliver.

Draft memo on incorporating climate resilience into hazardous waste permitting

On December 12, 2023, Carolyn Hoskinson, Director of EPA's Office of Resource Conservation and Recovery, released a draft memo on how the Regions and states can incorporate potential adverse climate change into the hazardous waste permitting process. The Regions are to conduct climate vulnerability screening to determine if additional requirements are needed in new, modified, and/or renewed permits. The memo cites the authorities the Regions can use to conduct these screenings and potential modifications. The only tool mentioned is a screening tool for sea level projections (<https://rcrapublic.epa.gov/rcra-public-web/action/posts/5>). EPA anticipates further guidance to be released including updates to the RCRA Model Permit, updates to the RCRA hazardous waste permitting regulations, and other technical guidance. The memo also refers to the Superfund Climate Resilience website (<https://www.epa.gov/superfund/superfund-climate-resilience>). Comments are due on or before January 26, 2024. A copy can be found at <https://www.epa.gov/hwpermitting/implementing-climate-resilience-hazardous-waste-permitting>.

SEP

Supplemental environmental projects (SEP) have been a controversial part of EPA enforcement actions for a number of years. They were widely used until the Trump Administration barred them based on a reading of the Miscellaneous Receipts Act (MRA) which requires government revenue to be deposited in the Treasury. The Trump Administration decided that SEPs were essentially payments to a third party as a result of enforcement and were not allowed under the MRA. This practice was quickly reversed once the Biden Administration took office. In December, EPA started a pilot program to allow the public to submit ideas for potential SEPs that can benefit a community impacted by violations of environmental statutes. The Agency has created an email inbox to allow the public to submit ideas. Additional information, email address, and instructions for submitting ideas can be found at <https://www.epa.gov/enforcement/supplemental-environmental-projects-seps>. The pilot project will run for a year.

NFPA Code 401

The National Fire Protection Association Code 401 is now available on their web site (www.nfpa.org – search on code 401). This code is not binding but is recommended guidance for the generation, transport, treatment, storage, and disposal of hazardous waste at generator sites, during transportation, and once it reaches a treatment, storage, and disposal facility.

Boiler litigation

Environmental groups submitted a petition for review and a petition for reconsideration of the 2022 final boiler rule. The only issue raised in the litigation was EPA's failure to use performance test data from 2012 until 2021 when developing revised standards. Final briefs for the litigation were submitted in December. Oral arguments will be scheduled for early 2024 with a decision expected in mid-2024. The petition for reconsideration will include the use of carbon monoxide as a surrogate for non-dioxin organic hazardous air pollutants and the 130 ppm carbon monoxide threshold. The Agency has not responded to the petition for reconsideration.

Enforcement

On December 7, 2023, EPA announced a settlement agreement with Heritage-Crystal Clean, LLC to resolve claims for violations of the requirements for management of hazardous waste and handling of used oil. The violations occurred at facilities in Indiana, Louisiana, Georgia, Pennsylvania, and Colorado. The company has agreed to pay a \$1,162,500 civil penalty and make improvements in management practices that are expected to cost \$1,628,502 or more. The company also agreed to stop treatment and disposal of parts-cleaning solvents that qualify as hazardous waste until they receive hazardous waste permits. Additional details can be found in the December 13, 2023 *Federal Register* notice.

EPA civil penalties

All federal agencies are required to adjust civil penalties once a year. On December 27, 2023, EPA published a final rule raising all civil penalties by 3.241 percent based on the current cost-of-living adjustment. The changes were effective on the date of publication. A complete listing of the new penalties can be found in the *Federal Register* notice.

EPA SBIR grants

On December 19, 2023, EPA announced funding 22 projects totaling almost \$2 million as a part of their Small Business Innovation Research program. Most will receive \$100,000 for the first six months to show “proof of concept.” If successful, an additional \$400,000 will be awarded to further develop and commercialize the concept. Some of the grants were for various methods to destroy PFAS compounds, one was to develop methods for recycling catalytic converters, and another to develop an automated system

to sort recycled materials. A complete list can be found at <https://www.epa.gov/newsreleases/epa-awards-nearly-22m-small-businesses-advance-innovative-environmental-technologies>.

Fence line monitoring

EPA requires fence line monitoring for refineries and is proposing to require them for certain chemical facilities. During the lead acid battery rulemaking, commenters suggested including fence line monitors as a part of the requirements. When the rule was finalized, those requirements were not included. Several environmental groups challenged the rule and in their August 31, 2023, opening brief, the plaintiffs indicated an intent to use this suit to limit the Agency's discretion to avoid consideration of fence line monitors for all MACT rules. EPA asked for and received a request to pause the litigation so they may file a voluntary remand of the rule. It is the Agency's intent to clarify the record and provide a fuller explanation of its decisions not to include fence line monitors for this source category.

Environmental justice

The Biden Administration made a series of funding announcements in December. Early in the month, the Agency announced the selection of 14 organizations to receive approximately \$7 million in grants to recruit and train environmental workers. These grants are through the Brownfields Job Training Program. A complete list of the recipients can be found at <https://www.epa.gov/brownfields/applicants-selected-fy-2024-brownfields-job-training-grants>.

Late in the month, the Administration awarded \$600 million to 11 Environmental Justice Thriving Communities Technical Assistance Centers. These centers will distribute the funds for local clean-up, local emergency preparedness and disaster resiliency programs, workforce development for local jobs, fence line monitoring projects, and projects to address illegal dumping. More details can be found at <https://www.epa.gov/newsreleases/biden-harris-administration-announces-600m-11-grantmakers-fund-thousands-environmental>.

CRWI meetings

Our next meeting will be on February 21-22, 2024 in Durham, NC. Please contact CRWI (mel@crwi.org or 703-431-7343) if you are interested in attending.