



## CRWI Update February 28, 2019

### 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  
B3 Systems  
Civil & Environmental Consultants, Inc.  
Coterie Environmental, LLC  
Focus Environmental, Inc.  
Franklin Engineering Group, Inc.  
METCO Environmental, Inc.  
Montrose Environmental Group, Inc.  
O'Brien & Gere  
Spectrum Environmental Solutions LLC  
Strata-G, LLC  
SYA/Trinity Consultants  
TestAmerica Laboratories, Inc.  
TRC Environmental Corporation  
W. L. Gore and Associates, 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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### PFAS action plan

On February 14, 2019, EPA released their action plan to address issues relating to contamination and emissions of per- and polyfluoroalkyl substances (PFAS). The Agency has been under pressure to address exposure to these chemicals from food, drinking water, and other sources. In the current action plan, EPA will:

- Initiate steps to evaluate the need for a maximum contaminant level (MCL) for perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) with a proposed rule in 2019;
- Begin the necessary steps to designate PFOA and PFOS as hazardous substances under CERCLA;
- Develop groundwater cleanup recommendations for PFOA and PFOS (anticipated in 2019);
- Develop toxicity values or oral reference concentrations for GenX and perfluorobutane sulfonic acid (final for these two in 2019, draft for five additional PFAS compounds in 2020);
- Develop new analytical methods and tools for understanding and managing PFAS risks (drinking water – Method 537.1 completed in 2018, additional methods in 2019; methods for other media – 2019 to 2021);
- Promulgate Significant New Use Rules that require EPA notification before chemicals are used in new ways that may create human health and ecological concerns (started in 2016 and ongoing);
- Use enforcement action where appropriate (started in 2018 and ongoing);
- Develop additional treatment and remediation technologies (2019);
- Require reporting of PFAS under TRI (start in 2019); and
- Understand the potential for air transport of PFAS (2022).

The timing for some of these actions is aggressive. In the past, it has taken EPA several years to propose and finalize MCLs. The initial step is to make a threshold determination on whether the chemical(s) should be regulated under the Safe Drinking Water

Act. In making this determination, the statute requires the Agency to consider whether:

- The contaminant has an adverse effect on the human health;
- The contaminant occurs in public water supplies often enough and at levels of public concern; and
- Regulation presents a meaningful opportunity for health risk reduction for persons served by public water systems.

While there is little doubt that PFASs are found in a number of locations and those are very important to the local residents, the question becomes whether it occurs “often” enough to justify the development of MCLs. To get to this, the Agency has to define the contamination level that creates a public concern and determine how many locations this level occurs. Failure to go through these steps creates a risk that any standards will be overturned by the courts (not following proper procedure). In addition, designating these compounds as “hazardous substances” under CERCLA does not set cleanup standards. Setting cleanup standards is a separate process. The entire program will not be simple but the Agency is being pressured by Congress, states, and local groups to “solve” this problem.

### **RTR final rules**

EPA published three risk and technology review (RTR) final rules in February. None of the three added restrictions due to either the risk or the technology review. All three removed any startup, shutdown, and malfunction provisions and added electronic reporting requirements for any performance test results. The friction materials manufacturing rule was published on February 8, 2019, the leather finishing operations rule was published on February 12, 2019, and the wet-formed fiberglass mat production rule was published on February 28, 2019.

In addition, EPA proposed a RTR rule for the hydrochloric acid production furnace source category on February 4, 2019. Like the final rules mentioned above, the Agency is proposing no additional requirements based on either risk or technology, is proposing to remove all startup, shutdown, and malfunction provisions, and is proposing to require electronic reporting of any performance test results. Comments are due on March 21, 2019.

### **Pharmaceutical hazardous waste**

The management standards for pharmaceutical hazardous waste were published on February 22, 2019. A summary of final rule was reported in the December 2018 Update. The effective date for the rule is August 21, 2019.

## **Greenhouse gas emissions**

On February 12, 2019, EPA announced that the draft inventory of greenhouse gas emissions and sinks (1900 – 2017) is now available for review. Comments will be accepted until March 14, 2019, although the notice specifically allows comments past that date.

## **MATS proposed rule**

On February 7, 2019, EPA proposed to eliminate the “appropriate and necessary” finding that underpins the Mercury and Air Toxics Standards (MATS) rule. Even though they removed the legal foundation for the rule, they did not propose to remove any standards. On February 28, 2019, they announced a public meeting (March 18, 2019) on the proposed rule and extended the comment period until April 17, 2019.

## **Inflation adjustment for EPA penalties**

The Federal Civil Penalties Inflation Adjustment Act, as amended, requires that all federal agencies annually adjust the amount of their penalties to reflect inflation, maintain the deterrent effect of those penalties, and to promote compliance. On February 6, 2019, EPA increased their penalties by 2.522%. RCRA penalties now range from \$14,910 to \$60,039 and Clean Air Act penalties range from \$9,472 to \$47,357 per violation per day. Additional details can be found in the *Federal Register* notice.

## **“Once in, always in”**

The court set oral arguments in the challenge to the 2018 memo that revised the “once in, always in” policy for April 1, 2019. Here, the environmental groups and the State of California argued that the memo failed to follow proper procedure and the statute prevents a source from switching to an area source after the compliance date. EPA responded that the memo was not final action. As such, the court does not have jurisdiction. EPA also argued that even if the court has jurisdiction, the Clean Air Act does not contain any language restricting when a source can change their status. Meanwhile, the Agency sent a proposed rule to the Office of Management and Budget (OMB) for review that would codify the provisions in the memo. OMB typically takes 90 days to review a rule. One should expect a proposed rule by mid-summer.

## **Enforcement**

On February 8, 2019, EPA asked for comments and recommendations on their 2020-2023 National Compliance Initiatives. The current initiatives are:

1. Cutting hazardous air pollutions;
2. Reducing toxic air emissions from hazardous waste facilities;
3. Reducing risks of accidental releases at industrial and chemical facilities;

4. Keeping industrial pollutants out of the nation's waters;
5. Ensuring energy extraction activities comply with environmental laws;
6. Keeping raw sewage and contaminated storm water out of our nation's waters;  
and
7. Reducing air pollution from the largest sources.

In the new plan, EPA intends to retain the first three, modify 4 and 5, take 6 and 7 off the list (they call it returning to the core programs), and add two new initiatives. The two new initiatives will be: increased compliance with drinking water standards; and reducing children's exposure to lead. On initiative 2, the Agency states that non-compliance remains widespread. They specifically mention identifying and repairing leaks from certain hazardous waste storage tanks, containers, pipes, valves and other equipment. On initiative 3, the Agency states that many regulated facilities are not adequately managing the risks posed. This would indicate that EPA's attention to hazardous waste facilities and accidental releases will continue for the foreseeable future. Comments are due on March 11, 2019.

On February 26, 2019, the House Energy and Commerce Committee held an oversight hearing on EPA's recent enforcement record. Democrats were concerned that the civil penalties for FY 2018 were the lowest since the enforcement office was established in 1994. In response, Assistant Administrator Susan Bodine pointed out that year to year statistics have more to do with timing of individual enforcement actions than with the overall success of the program. She mentioned that the Chrysler settlement in January 2019 for \$305 million would make FY 2019 higher than normal if the Agency imposed no additional fines for the rest of the year. She also pointed out that focusing on penalties does not capture the Agency's compliance focused activities and moving more enforcement activities to the states. She stated that the Agency is developing a method to document the impacts of those activities. In response to comments that enforcement staff has been cut since President Trump took office, she stated that the office is moving to hire as many as 42 new employees that would bring the office back to its statutory maximum of 649. Democrats on the committee were skeptical that this would actually occur.

### **Wheeler nomination approved**

On February 28, 2018, the Senate voted (52-48) to confirm Andrew Wheeler as the next EPA Administrator. No Democrats voted for his confirmation and one Republican (Susan Collins, R-ME) voted against the nomination. On February 5, 2019, the Environment and Public Works Committee favorably reported Peter Wright's nomination to be the next Assistant Administrator for the Office of Land and Emergency Management. This vote was along party lines (11-10). Mr. Wright's nomination has been placed on the Senate calendar but a date for a floor vote has not been scheduled.

## **CSB reporting rule**

The Chemical Safety Board (CSB) was created in the Clean Air Act Amendments of 1990. It was modeled after the National Transportation Safety Board and was tasked with investigating chemical incidents. The 1990 amendments also required the CSB to promulgate a rule requiring facilities to report accidental releases to the ambient air to the Board. Several environmental groups filed a deadline suit in December 2017 in the U. S. District Court for the District of Columbia alleging that CSB had failed in their duty to promulgate such a rule. The court agreed and on February 4, 2019, ordered CSB to finalize such a rule within one year.

## **Green New Deal**

One of the early steps by the Democratic majority in the House of Representatives has been to develop a Green New Deal fashioned after the Franklin D. Roosevelt's New Deal of the 1930's. The 1930's program resulted in such institutions as the Tennessee Valley Authority, the Civilian Conservation Corp, the Works Progress Administration, and Social Security. All were designed to help get the United States out of a depression and get people working (e.g., in 1933, the unemployment in Toledo, OH was at 80%). Some of these institutions are still with us. Most of the ideas in the Green New Deal have been around for several years but are being packaged in two resolutions. House Resolution 109 has been introduced by Representative Alexandria Ocasio-Cortez (D-NY) with 68 co-sponsors, all Democrats. Senate Resolution 59 was introduced by Ed Markey (D-MA) with 11 co-sponsors. The contents of both are similar. They call for the government to:

- Provide all people of the U.S. with high-quality health care, affordable, safe and adequate housing, economic security; and clean water, clean air, healthy and affordable food, and access to nature;
- Promote justice and equity by stopping, preventing future, and repairing historic oppression of indigenous people, communities of color, migrant communities, deindustrialized communities, depopulated rural communities, the poor, low-income workers, women, the elderly, the unhoused, people with disabilities, and youth;
- Meet 100 % of the power demands in the U.S. through clean, renewable, and zero-emission energy sources within 10 years;
- Clean up existing hazardous waste and abandoned sites;
- Provide resources, training and high-quality education (including higher education) to all people of the U.S.;
- Guarantee a job with family-sustaining wage, adequate family and medical leave, paid vacations, and retirement security; and
- Several other provisions.

The first thing to remember about these two resolutions is that they are resolutions. They do not contain any "enabling" legislation that requires the government to set up new programs or actually implement any of the ideas in the resolution. However, they

provide a road map of the issues the more liberal wing of the Democratic Party intends to pursue over the next two years. If they can keep their members in line, the Democrats have enough votes to pass H. Res. 109. While Senate Majority Leader Mitch McConnell (R-KY) said he will bring S. Res. 59 to the floor for a vote, it has less chance of passing the Senate.

### **CRWI meeting**

The next CRWI meeting will be on May 21-22, 2019, in Kingsport, TN. It will feature a tour of Eastman's hazardous waste combustion units. For additional information, contact CRWI (mel@crwi.org or 703-431-7343).