



## CRWI Update February 29, 2020

### MEMBER COMPANIES

Clean Harbors Environmental Services  
Eastman Chemical Company  
Heritage Thermal Services  
INVISTA S.à.r.l.  
3M  
Ross Incineration Services, Inc.  
The Dow Chemical Company  
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.  
Ramboll  
Spectrum Environmental Solutions LLC  
Strata-G, LLC  
SYA/Trinity Consultants  
TEConsulting, LLC  
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

44121 Harry Byrd Highway, Suite 225  
Ashburn, VA 20147

Phone: 703-431-7343  
E-mail: [mel@crwi.org](mailto:mel@crwi.org)  
Web Page: <http://www.crwi.org>

### PFAS

On February 3, 2020, Michigan and Wolverine World Wide, Inc. submitted a proposed consent decree with the U.S. District Court for the Western District of Michigan to settle a suit over PFAS contamination caused by its tannery waste disposal activities. Under the proposed agreement, Wolverine will pay \$69.5 million to extend municipal water service to 1000 homes whose wells were contaminated by PFAS. They will also monitor groundwater contamination in the area, investigate and respond to PFAS contamination entering surface waters, and develop methods to control PFAS migrating from the House Street Disposal Site and their tannery facility.

California has lowered their response levels for perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) to 10 ppt and 40 ppt, respectively. If a water system finds concentration above these levels, they will be required to take that source out of service, provide treatment, or notify customers. Water systems are also required to take several other measures to communicate test results to the public.

On February 20, 2020, several environmental and community groups filed suit in the U.S. District Court for the Northern District of California alleging that the Department of Defense's failed to prepare an environmental impact statement under the National Environmental Protection Act (NEPA) and failed to meet the requirements under the National Defense Authorization Act (NDAA) of 2019 when they awarded three regional contracts to manage the destruction of aqueous film forming foam (AFFF). The groups asked the court to annul the three contracts and restrict the incineration of all AFFF until the Department of Defense conducts an environmental assessment and an environmental impact statement under NEPA, and develops sufficient information to ensure that all the provisions of NDAA are being met before resuming any incineration of AFFF.

EPA released an update on progress in meeting the goals in their PFAS action plan. Three items mentioned are a preliminary determination to regulate PFOA and PFOS in drinking water (February 20, 2020), a supplemental proposal to ensure that new

uses for certain long-chain PFAS chemicals used in coatings cannot be manufactured or imported into the U.S. without notice and review under TSCA, and the Agency is pursuing several criminal investigations. Details for the criminal investigations were not released.

Finally, it was reported at an American Law Institute conference in Washington D.C. that a number of property and facility transactions have failed because insurance companies are writing exclusions for PFAS contamination. This may not be restricted to facilities that manufacture or use PFAS chemicals. Without insurance coverage, companies are reluctant to complete deals.

### **Title V petition process final rule**

On February 5, 2020, EPA published a final rule modifying the petition provisions of the Title V permitting program. The final rule implements changes in three areas:

- Development of an electronic system as the preferred method of submittal with specified email and physical addresses as alternative routes;
- Specification of the format and required content of the petition in an effort to aid petitioners prepare their submittals as well as to help the permitting authority evaluate those petitions; and
- Permitting authorities will be required to prepare a written response to comments document if significant comments are received and this document must be included in the statement of basis.

The effective date for this rule is April 6, 2020.

### **ADI**

On February 25, 2020, EPA announced the addition of 78 actions to the applicable determination index (ADI). The notice shows four that are applicable to Subpart EEE although others may also apply. The four are:

- Alternative monitoring request for hydrogen chloride;
- Performance waiver for dioxin/furans for boilers;
- Alternative monitoring request for flue gas flow rates; and
- Waiver for maximum feed rate operating limits.

The first three were approved and the last one was denied. More details can be found in the *Federal Register* notice.

### **Refinery reconsideration final rule**

In 2015, EPA finalized a refinery risk and technology review rule that allowed the use of pressure relief devices as a work practice and required fence line monitors for benzene. EPA received three petitions for reconsideration. These were granted and on February

4, 2020, the Agency published a final rule addressing the issues raised in those petitions. For pressure relief devices and fence line monitoring, EPA stated they received no information that would lead to a change in either of these requirements.

### **RTR rules**

On February 25, 2020, EPA published a final risk and technology review (RTR) rule for the metals coating source category. EPA did not add requirements based on either the risk or technology review processes. However, the Agency removed the startup, shutdown, and malfunction provisions and added electronic reporting requirements for test results.

On February 26, 2020, EPA re-opened the comment period for the miscellaneous organic NESHAP (MON) proposed RTR rule. Comments will now be accepted until March 19, 2020.

### **2018 TRI data released**

On February 11, 2020, EPA released the Toxics Release Inventory (TRI) data for 2018. Over 21,000 facilities reported releases. Of the 32.1 billion pounds of production related chemical wastes, 53% was recycled, 26% was treated, 12% was disposed of, and 9% was used for energy recovery. For the 3.8 billion pounds disposed of, 68% was on-site disposal, 16% was on-site air releases, 11% was off-site disposal and other releases, and 5% was discharges to surface water. The total amount of production-related waste increased for 2018 due to increases in manufacturing activities. Air releases continue to decline primarily because of power plants switching from coal to natural gas. A copy of the report can be found at <https://www.epa.gov/trinationalanalysis/report-sections-tri-national-analysis>.

### **CERCLA 108(b) proposed rule**

On February 21, 2020, EPA propose to not impose financial responsibility requirements under CERCLA Section 108(b) for the chemical manufacturing industry. EPA concluded that the degree of risk associated with production, transportation, treatment, and storage or disposal of hazardous substances from this source category does not trigger the requirements of this section. The comment period closes on April 21, 2020.

### **Boiler remand rule at OMB**

On February 7, 2020, EPA sent the boiler remand proposed rule to the Office of Management and Budget (OMB) for their review. This proposed rule will address three remand issues: revised standards for certain source categories, CO as a surrogate for non-dioxin organic hazardous air pollutants, and setting a 130 ppm CO threshold. OMB has up to 90 days to review this action. Should they take the full 90 days, a proposed rule should be available in early May.

## **Listing n-propyl bromide as a HAP**

EPA received two petitions to list n-propyl bromide as a hazardous air pollutant (HAP) under Section 112 of the Clean Air Act. One came from the Halogenated Solvents Industry Alliance (2010) and the other from the state of New York (2011). This chemical is used as a solvent for cleaning and degreasing, as an adhesive, and as a sealant. In 2017, EPA published a notice and request for public comment on the two petitions. In this notice, EPA stated that the petitions had met the criteria for listing and was soliciting additional data. On February 24, 2020, EPA submitted a document to the Office of Management and Budget (OMB) for their review. From OMB's website listing, it is unclear what this document is (calls the action a "notice"), but it appears unlikely that EPA would need to send a denial of the petition to OMB for review. It is widely anticipated that EPA will grant the petition and propose to add n-propyl bromide to the list of HAPs. If so, this will be the first HAP added to the list since it was developed as a part of the Clean Air Act Amendments of 1990. Any addition to the list will create some uncertainty over current and future maximum achievable control technology (MACT) rules. Most MACT rules have been completed. Adding a new HAP may add source categories as well as requiring review of MACT standards for existing source categories if those sources emit the newly listed chemical.

## **EPA guidance portal**

In a February 28, 2020, *Federal Register* notice, EPA announced the availability of a guidance portal. This portal is in response to E.O. 13891 requiring all agencies to provide a central web portal that contains all active guidance documents. The notice states that the Agency intends to add to this list as well as to modify or withdraw guidance documents as needed. The portal can be found at <https://www.epa.gov/guidance>. As expected, the opening page has a link to a searchable list for each office. Each page has the disclaimer "The agency may not cite, use, or rely on any guidance that is not posted on this website, except to establish historical facts." Interestingly, this disclaimer is not included in the *Federal Register* notice. The Office of Air and Radiation list has 910 entries while the Office of Land and Emergency Management has 3,691 entries. Each office page has a search box on the right hand side under the Related Information box. The Related Information box also has a link to a form where the public can submit a petition to add or withdraw a guidance document.

## **E-manifest litigation**

In October 2019, EPA raised the fees for all hazardous waste manifests. Shortly after, the Environmental Technology Council (ETC) sued the Agency, arguing that EPA used incorrect data, faulty assumptions, and did not follow proper procedure in making these changes to the fees. On February 20, 2020, ETC and EPA submitted a motion asking the court to hold the litigation in abeyance while the parties negotiated a settlement agreement. The court accepted that motion. The current fee structure remains in place

until the negotiations are completed, the court approves of the settlement, and EPA makes the agreed to changes in the fee structure.

## **Enforcement**

On February 13, 2020, EPA released their FY 2019 enforcement results. Some of the statistics included in EPA's press release include:

- Voluntary self-disclosed violations from over 1,900 facilities;
- Over \$4.4 billion spend to achieve compliance and control emissions;
- \$471.8 million in total fines;
- Commitments to reduce, treat, or eliminate 347.2 million pounds of pollution;
- 170 criminal cases opened;
- 137 criminal defendants charged; and
- Commitments for \$570.4 million for new site clean up work.

While these metrics may look impressive, the overall trend is downward, with the exception of the voluntary self-disclosures. For example, the estimated value of total fines is the second lowest in the past ten years, the volumes of land and water cleaned up are the lowest in ten years, the estimated benefits from hazardous and non-hazardous waste treatment were the lowest in ten years, and the number of inspections was the lowest in the ten years. A copy of the report can be found at <https://www.epa.gov/enforcement/enforcement-annual-results-fiscal-year-2019>.

## **EPA personnel**

Mike Stoker was appointed as Regional Administrator for Region 9 in May 2018. On February 5, 2020, EPA Administrator Wheeler sent a memo to all staff notifying them of Mr. Stoker departure from that position. On February 11, 2020, Administrator Wheeler appointed John Busterud as the next Region 9 Administrator. Previously, Mr. Busterud was a Senior Director and Managing Counsel for Pacific Gas & Electric Company.

Ryan Jackson's last day as EPA's Chief of Staff was February 24, 2020. He left the Agency to take a position with the National Mining Association. Michael Molina was named as acting Chief of Staff.

On February 13, 2020, President Trump announced his intention to nominate Doug Benevento as the EPA's Deputy Administrator. Mr. Benevento is currently the Associate Deputy Administrator, a position that does not require Senate approval. As of the end of February, the nomination has not been formally submitted to the Senate.

## **EPA FY 2021 budget**

On February 10, 2020, President Trump released his FY 2021 budget for EPA. It calls for a 26% reduction in funding from FY 2020 levels and would close 50 programs. This is similar to what has been submitted by the Administration for the past three years.

Congress has ignored this for the past three years and funded EPA for those three years at fairly stable levels. Most observers expect Congress to react the same this time and fund EPA at levels comparable to FY 2020. However, it is a presidential election year and unusual things can happen.

### **CSB reporting rule**

The Chemical Safety Board (CSB) published their reporting rule on February 21, 2020. The rule becomes effective on March 23, 2020. This rule adds six new sections to the Code of Federal Regulations starting at 40 CFR 1604.1. CSB modified the definition of serious injury to mean death or inpatient hospitalization but left the definitions of extremely hazardous substances and substantial property damage (greater than \$1 million) the same as proposed. Any facility that has an accidental release that results in a fatality, serious injury, or substantial property damage must submit a report to the CSB within eight hours. If the incident has been reported to the National Response Center (NRC), the CSB reporting requirement can be satisfied by calling or emailing CSB within 30 minutes of making the report to NRC and giving CSB the NRC identification number. The rule gives a list of information that must be included in the report. Failures to report will be forwarded to EPA for enforcement. It is not exactly clear when CSB will start enforcement action based on failure to report. The last sentence in the preamble suggests a one year grace period but there is nothing in the regulatory language that confirms that date. The proposed rule indicated that CSB would develop guidance on implementing this rule. In the final rule, CSB appears to backtrack on this, stating that guidance would be provided if needed to clarify certain aspects of the rule.