



CRWI Update February 28, 2021

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Eastman Chemical Company
Heritage Thermal Services
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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
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Biden Administration

The Biden Administration continues to make decisions on which Trump Administration actions to continue and which to revise. As should be expected, it is a mixed bag. For example, the Biden Administration finalized the Clean Water Act general permit for industrial stormwater and is moving forward to finalize a determination under the Safe Drinking Water Act to regulate perfluorooctanoic acid (PFOA) and perfluorooctanesulfonic acid (PFOS) but not to regulate 1,1-dichloroethane, acetochlor, methyl bromide, metolachlor, nitrobenzene, and RDX. But it would be fair to say that most of the actions will be revising or terminating rather than approving.

EPA met the February 19, 2021, deadline to send a list of Trump Administration actions targeted for review to the Office of Management and Budget (OMB). Neither EPA nor OMB have released that list. The executive order that created this deadline included 48 EPA actions but it is not clear if the current list adds to or subtracts from the original 48.

One of the actions already taken is the revision of the “social cost of carbon.” This is a metric used by EPA in cost-benefit analysis of climate change regulations. In 2010, the Obama Administration estimated the social cost for CO₂ emissions at \$45 per ton. The Trump Administration lowered that to \$6 per ton. The Biden Administration has developed an interim value of \$51 per ton with the suggestion that it could go higher in the future. Higher cost makes it easier to get a favorable cost-benefit ratio for climate change regulations. Another action was to withdraw the January 19, 2021, toxicity assessment of perfluorobutanesulfonic acid (PFBS). In addition, every action that had been submitted to OMB by the Trump Administration has been withdrawn. As of the end of February, there was one final rule (cross-state air pollution) at OMB. That rule was submitted for review on February 24, 2021.

The Department of Justice appears to be asking for delays on every litigation of Trump Administration EPA rules until those actions can be reviewed by current policy makers. This includes the challenges to the major source reclassification final rule, using startup,

shutdown, and malfunctions in state implementation plans rule, and the lead dust hazard rule.

In the enforcement arena, the climate change executive order will ramp up the use of enforcement to address environmental justice issues, especially for fence line communities. It is likely that there will be more use of EPA's EJ SCREEN model in both enforcement actions as well as regulatory actions. Supplemental environmental projects (SEP) are back in favor but may not be that easy to use because these Trump policies were put in place using the rulemaking process. It will take a rulemaking process to reverse some of these policies. The Department of Justice has withdrawn nine policy memos. These include (dates in represent when the memo was originally issued):

- Enforcement principles and priorities (1/14/21);
- Additional recommendation on enforcement discretion (1/14/21);
- Guidance regarding a newly promulgated rule restricting third-party payments (1/13/21);
- Civil environmental enforcement cases (1/12/21);
- SEP in civil settlements (3/12/20);
- Using SEPs in settlements with state and local governments (8/21/19);
- Enforcement principles and priorities (3/12/18); and
- Settlement payments to third parties (1/9/18).

There has been no indication on when new policies will replace the withdrawn memos.

Finally, it does not appear that the Biden Administration will use the Congressional Review Act (CRA) to revoke Trump Administration rules. While Democrat control of the Congress and Executive Branch makes the use of CRA more feasible, its use may create more problems than it solves. For example, once Congress passes a resolution of disapproval and the President signs it, the agency cannot promulgate a substantially similar rule except under special circumstances. The Biden Administration is interested in more stringent regulations, not deregulation. Thus, CRA might not be the right tool to switch from deregulation to regulation. Using the courts or the rulemaking process may be better choices to furthering their agenda.

EPA audit policy update

On February 5, 2021, EPA updated their frequently asked questions document on the audit program. There were very few substantial changes to the document from the previous versions. Some observers speculate that the purpose for updating the document was to show continued support by this Administration for the use of self-auditing and reporting. The revised document can be found at <https://www.epa.gov/compliance/epas-audit-policy-program-frequently-asked-questions>.

PITT reports

The PFAS Innovative Treatment Team (PITT) was formed to look at alternatives to thermal destruction for PFAS compounds. They have completed four of the six reports they currently plan to release. The two reports still in review by the Office of Land and Emergency Management are: 1) the computational fluid dynamics model incorporating fluorine kinetics for thermal destruction; and 2) locations of potential PFAS-processing facilities. Reports were released on electrochemical oxidation, mechanochemical degradation, pyrolysis and gasification, and supercritical water oxidation. Copies of these reports can be found at <https://www.epa.gov/chemical-research/pfas-innovative-treatment-team-pitt>.

GHG emissions and sinks

As a part of the global effort to document greenhouse gas (GHG) emissions, EPA develops an annual inventory of GHG emissions and sinks. The draft report for years 1900 through 2019 was released on February 12, 2021. The executive summary shows that overall GHG emissions since 2009 have been flat. Comments are due by March 15, 2021. A complete copy of the draft report can be found at <https://www.epa.gov/ghgemissions/draft-inventory-us-greenhouse-gas-emissions-and-sinks-1990-2019>.

EPA personnel

The Senate Environment and Public Works Committee favorably reported (14-6) Michael Regan's nomination to be the next EPA Administrator. A vote on the floor has not been scheduled but Mr. Regan is expected to be confirmed. The Senate Environment and Public Works Committee has scheduled a confirmation hearing on March 3, 2021, for Janet McCabe's nomination to be the next EPA Deputy Administrator. Chris Frey has joined EPA as a Deputy Assistant Administrator in the Office of Research and Development. Dr. Frey previously was a professor at North Carolina State University and was a former chairman of the Clean Air Scientific Advisory Committee. The Biden Administration has also filled a number of political slots that do not require Senate confirmation. Until Assistant Administrators can be nominated and confirmed, some of these individuals will be making policy decisions. Most of the program offices have these appointees in place.

EPA offices re-opening

On February 17, 2021, EPA's Chief of Staff send a memo to all personnel withdrawing the current plans to re-open EPA offices. The revised policy will allow EPA personnel to continue working remotely. There were no indications in the message about when staff will be expected to physically return to the office.

CRWI meetings

Our May 19-20, 2021, meeting will be virtual. Please contact CRWI (mel@crwi.org or 703-431-7343) if you have interest in attending.