



## CRWI Update February 28, 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  
SYA/Trinity Consultants  
TEConsulting, LLC  
TRC Environmental Corporation  
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

EPA has decided that developing toxicity assessments under the Integrated Risk Information System (IRIS) for seven per- and polyfluoroalkyl substances (PFAS) – Gen-X, PFBA, PFBS, PFDA, PFHxA, PFHxS, and PFNA – are high priority. EPA has already completed the IRIS determination for Gen-X (Reference Dose (RfD) of  $3 \times 10^{-6}$  mg/kg/day) and PFBS (RfD of  $3 \times 10^{-4}$  mg/kg/day). The Agency released a draft assessment for PFBA late in 2021 proposing a RfD of  $1 \times 10^{-3}$  mg/kg/day. That assessment was scheduled for a peer review in late February. On February 2, 2022, EPA proposed to set the RfD for PFHxA at  $5 \times 10^{-4}$  mg/kg/day. The comment period for PFHxA ends on April 4, 2022. The Agency has indicated the draft assessments for the other three PFAS compounds (PFDA, PFHxS, and PFNA) will be released in late summer or early fall of 2022. In addition, EPA has floated revised RfDs for PFOA ( $1.5 \times 10^{-9}$  mg/kg/day) and PFOS ( $7.9 \times 10^{-9}$  mg/kg/day). These revised RfDs are approximately four orders of magnitude lower than the previous values. All of the proposed RfDs will generate significant discussion with stakeholders.

A rule proposing to add PFOA and PFOS to the list of hazardous substances under CERCLA was sent to the Office of Management and Budget (OMB) on January 10, 2022. This has generated a number of meetings between stakeholders and OMB. For example, representatives from the waste industry and other industry sectors told OMB that the lack of approved disposal methods could significantly increase disposal costs. Other industry groups have asked for exemptions stating that until a suitable substitutes are available, the continued use of aqueous film forming foam is a safety issue. The environmental groups have argued that the listing would start the process for cleaning up Superfund sites. The environmental groups also expressed concern over lack of approved disposal methods. If OMB takes their full 90 days to review this action, one should expect a proposed rule to be released in late April or early May.

One of the more perplexing problems has been how to define PFAS. EPA has proposed to define PFAS as chemicals with the structure  $R-(CF_2)-C(F)(R')R''$  where  $CF_2$  and  $CF$  are saturated carbons and

none of the R groups can be hydrogens. The American Water Works Association has pointed out that at least one of what they consider PFAS (perfluoro-2-methoxyacetic acid (PFMOAA)) would not fit this definition because it does not have a fluorinated two carbon chain. PFMOAA has been found in North Carolina's Cape Fear River and in nearby drinking water supplies. Some additional work on a definition may be needed.

## **Environmental Justice**

On February 18, 2022, EPA released EJSCREEN 2.0. The updated version has new indicators on environmental burden, socioeconomic factors, climate change, health, and critical service gaps. EPA will hold a training webinar on the new version on March 9, 2022 at 12:00 noon EST. You can find a copy of the EJSCREEN at <https://www.epa.gov/ejscreen>. To join the webinar, go to <https://usepa.zoomgov.com/j/1611366191>. There is no sign up procedure.

Michigan Department of Environment granted a petition for a hot asphalt plant in a minority neighborhood after being asked by EPA to force the company to build the plant in another location. Michigan responded that the state did not have that authority and granted the permit. However, they added requirements banning the burning of waste oil, limiting the sulfur content of the fuels, adding more stringent stack testing requirements, and requiring an enhanced fugitive dust plan. Following the issuance of the permit, Michigan is getting sued by both sides. The asphalt company is arguing the requirements are too stringent for an area source and go beyond Michigan's authority. Environmental justice groups sued asking the county circuit court to overturn the permit to install. In addition, other environmental groups submitted petitions to EPA and the Department of Housing and Urban Development to block the project because it violates the Civil Rights Act.

The City of Chicago denied a permit application for a proposed scrap metal recycling facility in the southeastern side of the city. The denial cited a long history of pollution problems at another facility operated by the company. In a statement, EPA Administrator Regan said: "This is what environmental justice looks like: All levels of government working together to protect vulnerable communities from pollution in their backyards."

The San Joaquin Valley Air Pollution Control District submitted a state implementation plan (SIP) to meet fine particulate matter air quality standards. Environmental justice groups are asking EPA to deny that SIP because it unlawfully allows minority residents to continue to suffer disparate health impacts. Region 9 has not responded to the petition.

Following EPA Administrator Regan's environmental justice tour, EPA is expanding its review of a disputed cleanup at the Agriculture Street Landfill Superfund site in New Orleans. The city ran the landfill for many years before closing it and opening it up for development. Plaintiffs in the lawsuit allege that the city "duped" African American residents into purchasing homes by failing to disclose the development was being built

on contaminated soil. EPA is planning to expedite the review of the current clean up measures but it is unclear if that review will result in additional requirements.

EPA announced \$200,000 grants to 19 organizations to advance economic opportunities and assist in delivering environmental justice to underserved communities. These grants are to be used to train local residents to secure environmental jobs in their communities. They will lead to certifications in lead and asbestos abatement; hazardous waste operations and emergency response; mold remediation; environmental sampling and analysis; and environmental health and safety training. A complete list of the recipients can be found at <https://www.epa.gov/newsreleases/epa-awards-cheyenne-arapaho-tribes-part-38-million-grants-train-environmental-workers>.

A California lawmaker introduced AB 1857. This bill, if enacted, would eliminate the credit facilities receive for diverting solid waste from landfills. The legislation is designed to close the two municipal waste incinerators currently operating in California. One of the stated reasons for the bill is that the two incinerators are located in environmental justice communities.

Representative Carolyn Maloney (D-NY) introduced H.R. 6548 on February 1, 2022. This legislation would add a Clean Air Act requirement for any new or re-permitted power plant to conduct a cumulative impact analysis over a 1-mile radius taking into account all sources of pollution in that area. If the analysis shows the permit would harm public health, the permitting authority would be required to deny the permit. The bill has 13 co-sponsors, all Democrats, and has been assigned to the Energy and Commerce Committee for consideration.

### **Lead acid battery TR proposed rule**

On February 23, 2022, EPA published a proposed technology review (TR) rule for the lead acid battery source category. This is a combination of changes being made under the New Source Performance Standards and NESHAPs. As has been their practice, EPA is proposing to remove startup, shutdown, and malfunction provisions and to require electronic reporting of test results. Since all sources in this category are area sources, a risk review is not required but a technology review is. Under the technology review, EPA is proposing to require performance testing every five years, work practices to minimize fugitive dust, increased inspection frequency of fabric filters, and require bag leak detection systems. Comments are due on April 25, 2022.

### **“Once in, always in” rule**

The Trump Administration published a final rule that allowed facilities to become area sources if they take federally enforceable restrictions on their potential-to-emit to lower their emissions below the 10/25 tons per year thresholds. This rule is currently being challenged in the appeals court. The Biden Administration has indicated they intend to revise this rule and set a June 2022 estimate for proposal in the current Regulatory Agenda. On February 18, 2022, EPA asked the court to further delay any briefings until

September 19, 2022. The Agency is still planning on revising this rule but it wants additional time to do so. Expect a proposed rule in September.

### **SSM SIP call litigation**

In 2015, EPA determined that 36 states needed to modify their state implementation plans (SIP) to remove startup, shutdown, and malfunction (SSM) provision that the Agency decided was inappropriate under a 2008 court ruling. This process was put on hold during the Trump Administration. Early into the Biden Administration, the 2015 policy was re-instated and the Administration asked that the litigation on the 2015 rule be restarted. The court agreed and supplemental briefs from all parties were filed in January and February. Oral arguments are scheduled for March 25, 2022.

### **PVC as a hazardous waste**

In 2014, the Center for Biological Diversity (CBD) submitted a petition asking EPA to regulate discarded polyvinyl chloride (PVC) as a hazardous waste. When EPA did not respond to that petition, CBD filed suit in federal district court asking the court to set a deadline for the Agency to respond. The Agency has been in discussions with CBD but has not completed the negotiations. On February 18, 2022, EPA submitted an unopposed motion to extend the briefing deadline until March 23, 2022, saying the parties are close to a settlement but need additional time to complete negotiations. The court granted that motion. What EPA will be agreeing to is a timetable to respond to the petition. They are not agreeing to regulate discarded PVC as hazardous waste. First EPA will need to respond to the petition, either granting it or denying it. If they grant it, that will start the rulemaking process which could take 2-3 years.

### **Fence line monitoring audit**

In a February 22, 2022, letter to the Office of Land and Emergency Management, EPA's Office of Inspector General announced they would start the field work necessary to audit the current benzene fence line monitoring program for petroleum refineries. This requirement was put into place in 2015. These are passive monitors that take a 14-day sample. The sample canister is taken into the lab and analyzed. If the analysis shows a benzene level at that location exceeds an action level, the facility is required to conduct a root-cause analysis and correct any leaks found. The refinery industry considers this to be an extension of their current leak detection and repair program. The objective of the audit is to determine whether oversight of the current program assures that facilities take corrective actions when benzene levels above the threshold are detected. No date has been announced for the final report.

### **GAO report on addressing climate change and environmental justice in RMP**

From time to time, Congress will request that the General Accountability Office (GAO) develop reports on specific topics. On February 28, 2022, the GAO released a report on how EPA should incorporate climate change and environmental justice into the

development of risk management plans (RMP). The report was requested by Senators Tom Carper (D-DE) and Cory Booker (D-NJ). The report had the following six recommendations for how EPA could better incorporate these two issues into RMP requirements.

- EPA should provide additional compliance assistance to RMP facilities related to risks from natural hazardous and climate change.
- EPA should design an information system to track common deficiencies found during inspections and use this information to target compliance assistance.
- EPA should issue regulations and/or guidance to clarify requirements and provide direction for RMP facilities on how to incorporate risks from natural hazards and climate change into their risk management programs.
- EPA should develop a method for inspectors to assess the sufficiency of RMP facilities' incorporation of risks from natural hazards and climate change into risk management programs and provide related guidance and training to inspectors.
- EPA should incorporate the vulnerability of RMP facilities to natural hazards and climate change as criteria when selecting facilities for inspection.
- EPA should incorporate the relative social vulnerability of communities that could be impacted by an accidental release when selecting RMP facilities for inspection.

EPA agreed with all the recommendations but noted that they already have a system for tracking deficiencies found during inspections. EPA also noted that the upcoming RMP rule will likely address some of these issues. Further details and a copy of the report can be found at <https://www.gao.gov/products/gao-22-104494>.

### **EPA personnel**

EPA announced the appointment of Dr. David Cash as the Regional Administrator for Region 1 on February 24, 2022. Dr. Cash previously was the Dean of the School of Policy and Global Studies at the University of Massachusetts Boston. Region 10 is the only region still with an acting Regional Administrator. In addition, EPA appointed Robin Collins as a senior advisor to the Administrator for environmental justice issues. Ms. Collins was a professor of law at Willamette University in Oregon.

The Senate Environment and Public Works Committee did not vote on the nominations of Carlton Waterhouse, nominated to be the next Assistant Administrator for the Office of Land and Emergency Management, or David Uhlmann, nominated to be the next Assistant Administrator for the Office of Enforcement and Compliance Assurance, during February. The Senate did not vote on the nomination of Dr. Chris Frey to be the next Assistant Administrator for the Office of Research and Development in February. It is not clear what is causing these delays.

## **TCEQ industrial and hazardous waste workshops**

The Texas Commission on Environmental Quality (TCEQ) will be holding workshops on new rules and how they will impact industrial and hazardous waste generators. These workshops will be on March 11 and 22, 2022, and cover the following topics:

- Adding aerosol cans as a type of universal waste;
- New labeling requirements for hazardous waste containers and tanks;
- Episodic generation options for Very Small Quantity Generators (VSQG) and Small Quantity Generators; and
- Provisions to allow VSQG to send their hazardous waste to Large Quantity Generators under the control of the same person.

More information and a link to sign up for the workshops can be found at <https://www.tceq.texas.gov/assistance/waste/new-proposed-industrial-and-hazardous-waste-rules-online-workshops>.

## **Enforcement**

On February 22, 2022, the U.S. District Court for the Western District of Louisiana approved a consent decree resolving alleged violations at the Firestone Sulfur, LA facility. The facility will be required to make a number of improvements in air pollution control, pay a \$3.35 million civil penalty, and fund a project to upgrade ambient air monitoring systems in Southwest Louisiana. Additional details can be found at <https://www.epa.gov/enforcement/firestone-polymers-llc-settlement>.

## **CRWI meetings**

Our next meeting will be on May 18-19, 2022. We are still working on finding a location. Please contact CRWI ([mel@crwi.org](mailto:mel@crwi.org) or 703-431-7343) if you have interest in attending.