



## CRWI Update February 28, 2023

### 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  
TEConsulting, LLC  
TRC Environmental Corporation  
Trinity Consultants  
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

43330 Junction Plaza, Suite 164-641  
Ashburn, VA 20147

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

### HWC MACT RTR

On October 14, 2022, EarthJustice filed a deadline suit alleging that EPA failed in their non-discretionary duty to promulgate a risk and technology review (RTR) rule for the 2005 hazardous waste combustor (HWC) maximum achievable control technology (MACT rule). On February 27, 2023, EPA responded to the allegations by agreeing they had missed the deadlines but denying most other allegations in the petition. On February 28, 2023, the court ordered the parties to provide a proposed briefing schedule by March 14, 2023. On the surface, this seems to indicate negotiations are not producing results and the suit will go before the court for a decision. However, it is possible that negotiations are continuing and the environmental groups are using the briefing deadlines to push that effort forward.

### Technology review final rules

The Clean Air Act requires EPA to conduct a risk and technology review (RTR) eight years after developing initial technology standards. After that, the Act requires a technology review every eight years. The Agency is required to consider “developments in practices, processes, and control technologies” when conducting technology reviews. Now that EPA has completed most of the RTR rules, they are starting to develop technology review rules. In February, EPA published two final technology review rules: miscellaneous coatings manufacturing (February 22, 2023); and lead acid battery manufacturing (February 23, 2023). For the miscellaneous coatings source category, the Agency did not add any requirements based on a technology review but added restrictions for inorganic hazardous air pollutants based on the LEAN decision (if the Agency failed to regulate emissions when developing the original emission limits, they must do so during the next technology review). For the battery source category, EPA added fugitive dust control provisions for area sources and more stringent lead emission limits for major sources based on their technology review.

## **Flint Hills LDAR**

In 2020, Flint Hills Resources, Corpus Christi, TX, petitioned EPA to use an leak detection sensor network-detection response framework in lieu of a traditional Method 21 leak detection and repair (LDAR) program. On February 10, 2023, EPA published a notice approving that application. In addition, the notice contains a framework to facilitate approval for others that want to use similar systems.

## **SIP call**

In 2015, EPA determined that the State Implementation Plans (SIP) for 36 states or local authorities were inadequate because they contained exemptions for startup, shutdown, and malfunction events or allowed for an affirmative defense for certain deviations. Shortly after taking office, the EPA under Mr. Trump halted this process and started dismantling it by approving SIPs for Texas, North Carolina, and Iowa specifically allowing either affirmative defense provisions or allowing facilities to exceed emission limits during startup, shutdown, and malfunction events. When Mr. Biden took office, EPA re-instated the 2015 policy. On February 24, 2023, EPA published a proposed rule to revise the Texas, North Carolina, and Iowa SIPs to remove the provisions added during the Trump Administration. In addition, the Agency has determined that the SIPs for Maine, Connecticut, Tennessee (Shelby County), Louisiana, and Wisconsin need revisions. EPA will take comments on the proposed rule until April 24, 2023.

## **NMV guidance**

In 2021, EPA published draft guidance on developing petitions for no migration variance (NMV) for waste piles that are temporarily located within a RCRA Subtitle C landfill. The Agency received six comments. EPA did not make any changes in the document and on February 22, 2023, finalized it as proposed. A copy of the guidance can be found at <https://rcrapublic.epa.gov/files/14952.pdf>.

## **FIPs for CISWI and OSWI**

Commercial and industrial solid waste incinerators (CISWI) and other solid waste incinerators (OSWI) are regulated under Section 129 of the Clean Air Act. Under this section of the law, EPA promulgates national emission guidelines but relies on the states to develop plans to actually implement these requirements. EPA published the OSWI emission guidelines in 2007 and the CISWI emission guidelines in 2013. Some states picked up these guidelines and incorporated them into their state plans. Others did not. Without implementation plans, those guidelines are not legally binding. Section 129 gives EPA five years from promulgation to develop federal implementation plans (FIP) for those states that fail to incorporate these emission guidelines into their state plans. In 2017, EPA proposed a FIP for the CISWI rule but never finalized that rule. On February 15, 2023, EarthJustice filed suit in the U. S. District Court for the District of Columbia, alleging that EPA has failed in its non-discretionary duty to develop a FIP for

these two rules. The likely outcome of this suit will be deadlines for the Agency to finalize FIPs for these two rules.

### **TCEQ public participation plans**

The Texas Commission on Environmental Quality (TCEQ) initially released their public participation forms and instruction in November 2022. On February 9, 2023, TCEQ announced updates to those forms and instructions. These forms are designed to help TCEQ meet their Civil Rights Act Title VI requirements. Certain facilities that are applying for new permits or renewing permits are required to fill in a form that is designed to help TCEQ determine if additional public outreach is necessary or beneficial. Additional information, the form, and instructions can be found at <https://www.tceq.texas.gov/agency/decisions/participation/title-vi-compliance>.

### **Environmental justice**

In November 2022, the Office of Information and Regulatory Affairs (OIRA) asked the public for recommendations on how to broaden public engagement in the federal regulatory process. OIRA is the part of the Office of Management and Budget that reviews all federal rulemakings. On February 14, 2023, OIRA published a draft list of recommendations and asked for feedback on those recommendations. Some of the recommendations are:

- Proactively disseminate relevant materials through community-based organizations and trade organizations;
- Demonstrate how public comments impacts rulemakings;
- Use plain language;
- Use videos and short summaries to explain ramifications of rulemakings;
- Allow input from the public through video or audio submissions in addition to written submissions; and
- Conduct outreach to stakeholders when formulating regulatory priorities.

While the primary reason for this is to allow environmental justice communities to more easily participate in the rulemaking process, it will also make it easier for all stakeholders to participate. The announcement can be found at <https://www.whitehouse.gov/omb/information-regulatory-affairs/broadening-public-engagement-in-the-federal-regulatory-process/>.

President Biden signed Executive Order (EO) 14091 on February 16, 2023. This order is designed to complement an earlier order (EO 13985) and further the meaningful engagement with and investment in underserved communities. The order requires each agency to develop equity teams that include senior officials from all offices within that agency. The teams are to develop a comprehensive strategy to achieve racial equality and support of underserved communities over multiple generations. The initial plans are due in September 2023 and are to be revised annually. This was published in the *Federal Register* on February 22, 2023.

On February 23, 2023, EPA announced the availability of \$550 million to fund up to 11 entities to serve as grant makers to community-based projects through their Environmental Justice Thriving Communities Grantmaking program. These funds were provided under the Inflation Reduction Act. EPA intends to award approximately \$50 million to each of the entities for distribution over a three year period. The deadline to apply to be a grant maker is May 23, 2023. EPA anticipates that these grant makers will start awarding funds in early 2024. For additional information, go to [www.grants.gov](http://www.grants.gov) and search on environmental justice.

The Inflation Reduction Act also contained \$3 billion for environmental and climate justice grants. On February 9, 2023, EPA issued a request for information on how these funds should be spent. They are interested in ideas on program design, types of projects to fund, how to reduce application barriers, how to require reporting and conduct oversight, and how to provide technical assistance. Responses should be submitted by April 10, 2023. More information can be found at <https://www.epa.gov/inflation-reduction-act/inflation-reduction-act-environmental-and-climate-justice-program>.

On February 27, 2023, EPA announced awarding grants to 16 institutions totaling \$21 million to examine how climate change may compound adverse environmental conditions in underserved communities. A list of the institutions and the projects funded can be found at <https://www.epa.gov/newsreleases/epa-announces-21m-research-grant-funding-investigate-cumulative-health-impacts-climate>.

James Comer (R-KY) is the new Chairman of the House Oversight and Accountability Committee. Pat Fallon (R-TX) is the new Chairman of the Subcommittee on Economic Growth, Energy Policy, and Regulatory Affairs. On February 27, 2023, Mr. Comer and Mr. Fallon sent a letter to EPA Administrator Regan asking for information on two environmental justice grant programs funded under the Inflation Reduction Act. One is the \$30 million Environmental Justice Collaborative Problem-Solving cooperative agreement program and the other is the \$70 million Environmental Justice Government-to-Government program. The letter expresses concern on how this money will be spent. The letter asks EPA to provide all documents for both of these programs by March 13, 2023, including all emails of staff discussions of the programs. It appears that the House oversight committee will be taking a hard look at how EPA spends funds on environmental justice programs.

It is sometimes difficult to see how EPA will use environmental justice in the federal rulemaking process. One recent example is where EPA used the results from EJSCREEN to decide which industry sectors should get per- and polyfluoroalkyl substances effluent guidelines first. Based partially on the environmental justice analysis, EPA is putting a lower priority on developing effluent limitation guidelines for the leather tanning, paint formulation, and plastic molder sectors because these industry sectors are typically not in or around environmental justice communities. A copy of the

latest plans can be found at <https://www.epa.gov/eg/current-effluent-guidelines-program-plan>.

## **PFAS**

The European Chemical Agency has released a proposal to ban the use of per- and polyfluoroalkyl substances (PFAS) within 18 months of enactment and to allow for up to 12 years to phase out those compounds that are difficult to replace. If enacted, this would affect the use of about 10,000 compounds. The proposal is being led by Germany and the Netherlands with support from Norway, Sweden and Denmark. Observers project final passage no earlier than 2025. PFAS is defined in the proposal as any compound containing at least one fully fluorinated methyl (CF<sub>3</sub>-) or methylene (-CF<sub>2</sub>-) carbon atom.

EPA sent an advanced notice of proposed rulemaking to the Office of Management and Budget (OMB) on February 10, 2023. In this notice, EPA will be asking for information and data on whether additional PFAS compounds should be added to the list of hazardous substances under CERCLA. OMB typically takes 90 days to complete their review.

The Department of Defense (DoD) and certain states have begun to certify labs for EPA Method 1633. Method 1633 has not completed its multi-laboratory validation and is still considered to be a draft method. DoD is requiring the use of the current draft method for all new sampling and analysis. EPA plans to release the next draft early in 2023 with a final method late in 2023. Currently 14 states are certifying labs for the draft method.

## **Coal no longer needed for baseline power**

The Inflation Reduction Act provided \$369 billion for energy security and climate change. A large portion of this is for incentives to reduce the use of fossil fuels. On February 15, 2023, an EPA analyst made a presentation on how this act will influence the use of fossil fuels in the future. The analysis suggested that by 2040, coal would no longer be needed to provide baseline electric power and the law would result in a 90% reduction in overall coal plant capacity. The analysis also projected a drop in the amount of baseline power provided by natural gas-fired generators. The conclusions from the analysis were that the impacts of the tax credits for renewables, nuclear, battery storage, and carbon capture would lead to increases from low- or zero-emission resources, thus reducing the need for fossil fuels both in terms of capacity and generation. The author pointed out that these are projections not predictions and suggested further analysis may change the results. You can listen to the presentations at <https://www.rff.org/events/rff-live/future-generation-exploring-the-new-baseline-for-electricity-in-the-presence-of-the-inflation-reduction-act/>.

## **Denka complaint**

On February 28, 2023, EPA and the Department of Justice filed a complaint in the U.S. District Court for the Eastern District of Louisiana to compel Denka Performance Elastomers LLC to reduce chloroprene emissions from their LaPlace, LA facility. According to the complaint, the average concentrations of airborne chloroprene in the communities surrounding the facility have averaged between 0.4 and 2.9 µg/m<sup>3</sup> since April 2018. EPA estimates that breathing chloroprene at concentrations averaging 0.2 µg/m<sup>3</sup> over a 70-year lifetime increases a person's risk of developing cancer by 1-in-10,000. The court was asked to order Denka to "immediately take all necessary measures to eliminate the imminent and substantial endangerment posed by chloroprene emissions from the Facility" and to "take all other actions as may be necessary to address and mitigate the harm to public health and welfare that Denka's chloroprene emissions have caused." In addition, the court was asked to order DuPont to authorize all construction to allow Denka to comply with the order. DuPont owns the site. A copy of the complaint can be found at <https://www.epa.gov/system/files/documents/2023-02/epaandjusticedept.pdf>.

## **CRWI meetings**

Our next meeting will be on May 17,18, 2023, in East Liverpool, OH. Please contact CRWI ([mel@crwi.org](mailto:mel@crwi.org) or 703-431-7343) if you have interest in attending.