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Bayer CropScience
Clean Harbors Environmental Services
Eastman Chemical Company
Heritage Thermal Services
INV Nylon Chemicals Americas, LLC
Ross Incineration Services, Inc.
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AECOM
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Ramboll
Spectrum Environmental Solutions LLC
Strata-G, LLC
TEConsulting, LLC
Trinity Consultants
W.L. Gore and Associated, 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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CRWI Update February 29, 2024

HWC MACT RTR

As of February 29, 2024, the judge had not released his decision on the deadline suit. EPA continues to work on the rule based on issuing an August 2025 proposed rule.

OB/OD proposed rule

The open burn/open detonation (OB/OD) proposed rule was released by the Office of Management and Budget on February 20, 2024. EPA has not released a signed copy of the proposed rule as of the end of February.

CWA “worst case” spill rule

The Office of Management and Budget completed its review of the Clean Water Act (CWA) final rule requiring facilities to plan for “worst case” chemical spills and set first-time requirements for facilities near navigable waters on February 21, 2024. The Agency has not released a signed version as of the end of February.

Lime kiln supplemental proposed rule

On February 9, 2024, EPA published a supplement to the lime kiln proposed rule. It contains a health-based emissions limit for hydrogen chloride, an intra-quarry variability factor for mercury, and allows emissions averaging for all existing units at the same site except for the mercury and hydrogen chloride emission limits. EPA decided that total hydrocarbon was not a good surrogate for organic hazardous air pollutants (HAP) for this source category. They proposed to use an aggregate limit of eight organic compounds instead as a surrogate for the rest of the organic HAPs. The eight compounds are formaldehyde, acetaldehyde, toluene, benzene, xylenes, styrene, ethyl benzene, and naphthalene.

Taconite ore final rule

On January 31, 2024, the EPA Administrator signed the taconite ore final rule. EPA added emission limits for hydrogen chloride and hydrogen fluoride, will allow emissions averaging for existing units if more than one unit per location, and require testing at least twice in

5 years. EPA choose not to develop subcategories because the emission levels between subcategories were not statistically different. EPA also explained that the differences in mercury, hydrogen chloride, and hydrogen fluoride emissions were primarily due to controls and not based on size, type, or class. In addition, all performance testing must be completed within seven days. Industry submitted data showing variability in the mercury content of the mineral deposits. EPA did not accept the data because there were too few data points for the top performing sources and industry did not provide the laboratory reports to collaborate their data. This rule has not been published as of the end of February. A signed copy can be found at https://www.epa.gov/system/files/documents/2024-02/frn-taconite-preamble-rule_final.pdf.

RMP final rule

On February 27, 2024, the EPA Administrator signed the amendments to the Risk Management Plan (RMP). The final rule will include:

- Requiring certain facilities to conduct a safer technologies and alternatives analysis;
- Requiring employee participation in decision making;
- Allowing for partial or complete shutdown when there is a potential for a catastrophic release;
- Allowing anonymous reporting of unaddressed hazards;
- Requiring third-party audits and root cause analysis;
- Included power loss as a possible cause for releases; and
- Increased transparency to nearby communities.

A copy of the signed rule can be found at https://www.epa.gov/system/files/documents/2024-02/risk-management-program-final-rule-prepublication_partial508.pdf.

Integrating climate change into corrective action

On February 6, 2024, EPA's Office of Land and Emergency Management released their final guidance on "Integrating Climate Change Adaption Considerations into the Resource Conservation and Recovery Act Corrective Action Process." The guidance includes conducting climate vulnerability screening for temperature changes, changes in precipitation patterns, sea level rise, and changes in long-term weather patterns. These considerations are to be included in remedy selection, remedy implementation, and long-term stewardship. The guidance also includes several examples. A copy can be found at <https://www.epa.gov/hw/climate-change-adaptation-considerations-and-resource-conservation-and-recovery-act-corrective>.

PFAS

On February 8, 2024, EPA published two proposed rules. One would amend the definition of hazardous waste in 40 CFR 264 and 270 as applicable to corrective action for RCRA treatment, storage, and disposal facilities. The comment period was originally set for March 11, 2024. After a request from industry, EPA extended the comment period until March 26, 2024. The extension notice was posted at <https://www.epa.gov/hw/proposal-clarify-authority-address-releases-hazardous-waste-treatment-storage-and-disposal> and will be published in the *Federal Register* early in March. The second would add nine per- and polyfluoroalkyl substances (PFAS) chemicals to the list of hazardous constituents under Appendix VIII. The comment period for the second ends on April 8, 2024. More details for both can be found in the January Update.

On February 8, 2024, EPA released a method for the extraction and analysis of PFAS compounds on cut plastic coupons using LC/MSMS. While the method is designed for plastic coupons, EPA states that it can be used for fabric, packaging paper, and other substances. The method can be found at <https://www.epa.gov/pesticides/epa-releases-new-methodology-detect-low-levels-pfas-plastic-containers>.

The Southern Environmental Law Center has filed a notice of intent to sue GFL Environmental over potential releases of PFAS compounds from its Sampson County landfill. This facility accepts wastes from the Chemours facility in Fayetteville, NC and the U.S Marine Corps Base Camp Lejeune. The notice alleges that the landfill operated leachate evaporation systems and flares that may have emitted PFAS into the atmosphere. These allegations were based on scientific literature, not actual measurement data.

The final rule to designate perfluorooctanoic acid and perfluorooctanesulfonic acid as hazardous substances under CERCLA was sent to the Office of Management and Budget on December 6, 2023. It is still under review.

Environmental justice

The Clean Air Act requires that certain consent decrees be published in the *Federal Register* and the Agency take comments on the provisions of those decrees. In December, the Agency and the Department of Justice filed a consent decree with RJ Torching over a scrap metal yard near Flint, MI. As published, that decree required the company to take steps to reduce PM emissions and to pay a \$150,000 civil penalty. Environmental groups filed comments asking the Agency to modify the decree to increase PM monitoring in nearby neighborhoods, provide air filters for nearby neighbors, and to take steps to reduce dust from increased truck traffic adjacent to the facility. As of the end of February, the Agency has not responded to the comments.

On February 14, 2024, EPA released their 2023 Equity Action Plan. The initial version was published in 2022. The 2023 version identifies eight priorities. Four are carried over from the 2022 version. The eight priorities are:

- Improve access for communities to federal assistance;
- Reduce cumulative impacts and health disparities;
- Strengthen the Agency's civil rights compliance program;
- Protect children from exposures to environmental harms;
- Address inequitable access to resources for rural communities;
- Ensure public access to Agency programs and address environmental harms for people with disabilities;
- Strengthening community-based participatory science to achieve environmental equity; and
- Improve data and analytic capacity to better identify and remove barriers.

Included in the press release were three accomplishments from the 2022 version. These were:

- Selected 11 Environmental Justice Thriving Community Technical Assistance Centers to receive a total of \$600 million dollars from the Inflation Reduction Act;
- Created a robust technical assistance program to help eligible organizations access the \$2 billion dollars available through the Environmental and Climate Justice Community Change Grants Program; and
- Awarded over \$11 billion in clean water investments from the Bipartisan Infrastructure Law under the State Revolving Funds, with at least 49% of this funding going to disadvantaged communities.

Additional details can be found at <https://www.epa.gov/environmentaljustice/equity-action-plan#overview>.

In 2021, environmental groups filed a complaint with EPA alleging that the Illinois EPA discriminated on the basis of race and national origin in violation of Title VI of the Civil Rights Act of 1964 and EPA's nondiscrimination regulations. The original complaint pertained to the movement of an existing scrap metal facility from one location in Chicago to another location also in Chicago. EPA accepted that complaint and on February 23, 2024, released a resolution. Under the agreement, Illinois EPA agrees to consider the following when issuing permits:

- The facility's compliance history;
- Location of sensitive populations or places (schools, hospitals, day care centers, etc.) near the facility;
- Culturally significant resources (churches, cemeteries, etc.) near the facility; and
- Factors that may increase exposure or vulnerability (subsistence fishing, hunting, foraging, etc.).

If the analysis shows any disparate impact, Illinois EPA will consider making additional permit requirements, prioritizing compliance inspections, and prioritize grant funding for the affected communities. A copy of the agreement can be found at <https://epa.illinois.gov/topics/environmental-justice/grievances.html>.

CRWI meetings

Our next meeting will be on May 15-16, 2024 in Kansas City, MO. Please contact CRWI (mel@crwi.org or 703-431-7343) if you are interested in attending.