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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
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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
Web Page: <http://www.crwi.org>

CRWI Update February 28, 2025

HWC MACT RTR rule

The Agency is working to meet the court ordered December 31, 2025, final rule deadline. EPA has not announced a timeline for a proposed rule but it is expected sometime between the middle of March and the end of May. Both the proposed rule and the final rule will go to the Office of Management and Budget for review.

RCRA permit module update

In January, EPA updated their general permit conditions module of the RCRA model permit. Detail can be found at <https://www.epa.gov/hwpermitting/resource-conservation-and-recovery-act-model-permit#Permit>.

National capacity assessment

EPA has determined that the U.S. has adequate capacity to treat and dispose of hazardous waste likely to be generated between now and 2049. The report can be found at <https://www.epa.gov/hwpermitting/assessment-national-capacity-hazardous-waste-management>.

Final rule litigations

For the most part, the Department of Justice and EPA are asking the court to pause litigation of final rules from the Biden Administration. For example, the government has asked the court to pause the litigation for the power plant greenhouse gas rule, definition of waters of the United States, TSCA evaluations of existing chemical, emission limits for six per- and polyfluoroalkyl substances (PFAS) in drinking water, addition of perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) as hazardous substances under CERCLA, and others. One exception is that EPA continues to defend the air toxic limits for ethylene oxide sterilizers. The primary reason for the delay is to allow the incoming political staff to review the rules and decide whether to continue defending them. If they decide not to defend, the government will likely ask for a voluntary remand and start the regulatory process of revising those rules. Readers should be reminded that a remanded rule remains in the Code of Federal Regulations until formally withdrawn with another rulemaking.

EPA policies

On February 4, 2025, EPA Administrator Zeldin outlined five pillars that will guide his work as he leads the Agency. These are:

- Clean air, land, and water for every American;
- Restoring American energy dominance;
- Permitting reform, cooperative federalism, and cross-agency partnership;
- Making the U.S. the artificial intelligence capitol of the world; and
- Protecting and bringing back American auto jobs.

Interesting, only two of these pillars fall directly under EPA's charter. But it should be noted that it includes cooperative federalism. This could transfer some or most of the Agency's work to the states. This process was started in the first Trump Administration and will likely be continued during his second term.

EPA personnel

President Trump has submitted formal nominations for David Fotouhi (Deputy Administrator), Aaron Szabo (Assistant Administrator, Office of Air and Radiation), Jessica Kramer (Assistant Administrator, Office of Water), Sean Donahue (Assistant Administrator, Office of General Counsel), and Catherine Hanson (Chief Financial Officer). Confirmation hearings have been scheduled for Mr. Fotouhi and Mr. Szabo for March 5, 2025, in the Senate Environment and Public Works Committee.

Late in January, the Office of Personnel Management sent out an email to approximately 2.3 million federal employees offering a buyout. This would allow those taking the offer to stop working and continue to be paid (pending appropriations from Congress) until September 30, 2025. Staff had until February 6, 2025, to take the offer. The union representing some of the federal employees filed suit. A district judge issued a stay of the offer on February 6th and ordered a hearing on February 19th. After the hearing, the judge set an indefinite block on the offer. The Office of Personnel Management said they would comply with the order.

In addition, EPA received authority from the Office of Personnel Management to set up an early retirement program within the Agency. To apply for the program, an employee must be at least 50 years old with at least 20 years of service or any age with at least 25 years of federal service.

On February 14th, EPA sent notices to approximately 400 probationary employees (those who have been at their position for less than two years) that they were being terminated. On February 19th, notices were sent that the termination was rescinded. It appears that some of the original termination orders conflicted with the original job offers and others were deemed as essential to EPA operations.

On February 22nd, the Department of Government Efficiency sent a mass email asking federal employees to send the Office of Personnel Management a list of their accomplishments for the past week by the end of the day on the 24th. Some federal agencies and department told their employees to ignore the request. EPA told their employees to comply with the request.

EPA has informed personnel that most will be expected to return to the office. This is a multiple stage process depending on which union represent each group and what their agreements are. The first group was expected to show up in-person on February 24th. The rest will be phased in through May 5th. This does not apply to employees who have reasonable accommodations due to a disability, employees on Domestic Employees Teleworking Overseas arrangements, or military spouses.

EPA spending

The Department of Government Efficiency has flagged 21 environmental justice grants totaling \$77.1 million that were to be given to 20 nonprofit organizations and universities. EPA Administrator Zeldin indicated that the Agency would withhold \$67.4 million that has not already been released. This will bring up the question on whether the Executive Branch can refuse to spend money that Congress has appropriated.

In addition, Mr. Zeldin has announced a plan to cut EPA's spending by 65% compared to the FY 2024. This will be accomplished by cutting wasteful grants, modifying the Agency's real estate footprint, and modification of personnel. One should expect reducing the number of EPA contractors and cutting travel to be a part of this exercise. It is not clear where these reductions will be made but it will include some office consolidation and personnel reductions. This is part of an overall process for reducing the size of government. All agencies have until March 13, 2025, to submit phase 1 of a reduction in force plan. Phase 2 is due on April 14, 2025. These plans are to be implemented by September 30, 2025.

Citizen suit

Puerto Rican residents have filed a lawsuit against a commercial sterilizer alleging the facility is exceeding its allowable emissions of ethylene oxide. This type of litigation is not uncommon but may become more prevalent with potential cuts in personnel from the Office of Enforcement and Compliance Assurance plus the expected shift in federal enforcement priorities.

EO

Mr. Trump has issued over 75 Executive Orders (EO) governing a number of different activities within the Executive Branch. These have generated about 100 lawsuits to date. One EO issued on February 19, 2025, instructed all agencies to initiate a review of all regulations for consistency with the law and current policy. Each agency is required to identify the following classes of regulations:

- Unconstitutional regulations and regulations that raise serious constitutional difficulties;
- Regulations based on unlawful delegations of legislative power;
- Regulations that are based on anything other than the best reading of the underlying statutory authority or prohibition;
- Regulations that implicate matters of social, political, or economic significance that are not authorized by clear statutory authority;
- Regulations that impose significant costs upon private parties that are not outweighed by public benefits;
- Regulations that harm the national interest by significantly and unjustifiably impeding technological innovation, infrastructure development, disaster response, inflation reduction, research and development, economic development, energy production, land use, and foreign policy objectives; and
- Regulations that impose undue burdens on small business and impede private enterprise and entrepreneurship.

This list is due to the Office of Information and Regulatory Affairs within 60 days. These are to be added to the Unified Regulatory Agenda, as appropriate. In addition, each agency shall de-prioritizing enforcement actions for regulations that are based on anything other than the best reading of a statute and de-prioritizing actions to enforce regulations that go beyond the powers vested in the Federal Government by the Constitution.

IRA and BIL funds

In late January, President Trump signed an EO freezing funds appropriated by Congress under the Inflation Reduction Act (IRA) and the bipartisan infrastructure law (BIL). This was challenged and at least two federal district judges have placed a temporary restraining order on this action, allowing the continued disbursement of these funds. The Department of Justice has filed an appeal of this order. This is just one of the battles between Congress and the Executive Branch over who has control of government spending.

Before leaving office, the Biden Administration provided \$14 billion to the National Clean Investment Fund and \$6 billion to the Clean Communities Investment Accelerator. These two entities are to further disburse these funds to private sector groups and community leaders. On February 13, 2025, EPA Administrator Zeldin announced plans to claw back these funds alleging that the previous administration illegally parked this money in an outside financial institution. This too will be fought out in court.

PFAS

The Department of Defense (DoD) released its report to Congress on anticipated costs to clean up PFAS contamination. The report, released on February 18, 2025, estimated that the future cleanup for PFAS at active military installations, National Guard

installations, and closed military installations would cost more than \$9 billion dollars. In 2023, DoD reported that the cost for cleanup would likely exceed \$7 billion. DoD has already spent \$2.6 billion to address PFAS contamination.

On February 5, 2025, EPA published a rule temporarily delaying the effective date of the final rule that adds nine PFAS chemicals to the required reporting requirements under the Toxics Release Inventory. That *Federal Register* notice also extended the effective date for the technical corrections to the hazardous waste generator improvements rule, the hazardous waste pharmaceutical rule, and the definition of solids waste rule. The new effective date for both is March 21, 2025. EPA will use that time to decide how to proceed with each rule.

Senator Cynthia Loomis (R-WY) has stated she intends to re-introduce legislation to provide relief from Superfund for passive receiver of PFAS compounds. Representative Marie Gluesenkamp (D-WA) has introduced a bill in the House (H.R. 1267) to provide exemptions for PFAS compounds for drinking water and waste water treatment systems. Senator Shelley Moore Capito (R-WV), Chair of the Senate Environment and Public Works Committee, has also expressed interest in developing exemptions for passive receiver of PFAS. With this much interest this early in the session, it appears that some type of legislative relief for passive receivers may happen. Environmental groups oppose this idea. Also in play is whether EPA will decide to go through the rulemaking process to remove the original rule listing PFOA and PFOS as hazardous substances under CERCLA. Both activities will take time.

It appears likely that some states will continue setting limits on PFAS emissions regardless of what the federal government does. A bill that would require incorporation of the six federal PFAS drinking water guidelines into state code has been introduced in the California legislature. According to a Safer States publication, 32 states appear likely enact some form of PFAS chemical controls. Additional information and the list of states can be found at <https://www.saferstates.org/press-room/pfas-forever-chemical-policies-expected-to-be-more-expansive-in-states-this-year-new-analysis-finds/>.

Environmental justice

EPA has placed 171 employees in the office of diversity, equity, and inclusion and the offices of environmental justice on administrative leave. Staff for the Office of Environmental Justice and the External Civil Rights Compliance Office were told those two offices would be closed in the next few weeks.

Prior to leaving office, the Biden Administration finalized a rule giving West Virginia primacy for regulating Class VI deep wells to sequester carbon dioxide. This rule was never published and was withdrawn per the January 20, 2025, executive order. On February 16th, Mr. Zeldin signed a revised final rule that left most of the provision in place but removed all references to environmental justice. The Agency also removed language in the response to comments document referencing that West Virginia had committed to incorporating environmental justice into its program.

Mr. Trump has closed the White House Environmental Justice Advisory Council. The website has been archived. All scheduled calls for the National Environmental Justice Advisory Council's website have been canceled. Both groups contend they will continue their work but it is difficult to see how without funding.

EJSCREEN was removed from EPA's website. The trade press is reporting that a version with the data to run the model has been preserved and will be available from a non-governmental source.

CRA

The Congressional Review Act (CRA) allows Congress to pass a resolution of disapproval for any regulation that was promulgated by any federal agency within the last 60 legislative days. This resolution only needs a simple majority in the House and the Senate to pass. If the president signs it, that regulation is nullified and cannot be repromulgated in essentially the same form. As of the end of February, 50 resolutions of disapproval had been submitted in the House and the Senate. These included EPA rules to overturn the methane fees rule, greenhouse standards for heavy duty vehicles, the lead and copper rule, the trichloroethylene ban, the NESHAP requirements for the rubber tire manufacturing industry, New Source Performance Standards Review for volatile organic liquid storage vessels, lead dust hazards standards, phase down of hydrofluorocarbons, and others. The House and Senate have passed the CRA disapproving of the methane fees rule. It is expected to be sent to the President early in March for his signature. Leadership has given members of Congress until mid-March to submit additional resolutions of disapproval. Given the limited floor time and the rather permanent nature of the removal of the rule under the CRA, do not expect all to be enacted.

CRWI meetings

The next CRWI meeting will be held on May 21-22, 2025, in Longview, TX. It will feature a tour of Texas Eastman's hazardous waste combustors. Please contact CRWI (703-431-7343 or mel@crwi.org) if you are interested in attending.