



CRWI Update January 31, 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

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Formosa Plastics Corporation, USA

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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

On January 6-7, 2022, EPA's Science Advisory Board (SAB) reviewed several draft documents the Agency is using as the basis for setting drinking water limits. These include draft documents for deriving a maximum contaminant level goal for perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) and an analysis of cardiovascular disease risk reductions as a result of reduced PFOA and PFOS in drinking water. The Board had a number of questions for the Agency on methodologies used and endpoints selected but in general seemed favorable to the approaches taken. However, they did criticize the Agency's lack of transparency in the documents. It is not clear when SAB will release their report or how EPA will respond.

On January 10, 2022, EPA submitted a proposed rule to designate PFOA and PFOS as hazardous substances under CERCLA to the Office of Management and Budget (OMB). OMB typically takes 90 days to review an action. One should expect a proposed rule in April.

EPA announced an updated per- and polyfluoroalkyl substances (PFAS) listings on January 24, 2022. This triggers reporting requirements under the Toxics Release Inventory program for four new PFAS chemicals (perfluorobutane sulfonic acid, potassium perfluorobutane sulfonate, and two chemicals identified by their Chemical Abstracts Service registry numbers (203743-03-7 and 65104-45-2)). These reports will be due in July 2023 for the 2022 reporting year.

Majority staff of the Senate Environment and Public Works Committee have begun work on a PFAS bill. They are gathering input from outside stakeholders. The objective is to develop a bipartisan bill that can attract enough Republicans that it can be passed. Specifics of the bill have not been made public. The House has already passed a PFAS bill (H.R. 2467) but most observers believe that the Senate version will need to be less stringent for it to have a chance of passage.

On January 27, 2022, the Public Employees for Environmental Responsibility released a report on PFAS waste being disposed of

in the U.S. The data for this report was developed from e-manifests and state waste code searches. According to the report, 6,545 shipments of nearly 14 million kilograms of waste containing PFAS materials were made between 2018 and 2021. They suggest that these numbers are a small portion of the actual PFAS waste shipped. An interactive map and the report can be found at <https://peer.org/areas-of-work/public-health/pfas/>.

Environmental justice

On January 5, 2022, EPA's Office of Land and Emergency Management released a draft environmental justice action plan. The plan is broken up into five sections: strengthen compliance; incorporate environmental justice considerations; improve community engagements; Justice 40; and a glossary of environmental justice terms.

In the strengthen compliance section, EPA plans to:

- Propose and finalize the revisions to the risk management plan rule to strengthen prevention and emergency response in environmental justice areas;
- Target future Spill Prevention, Control, and Countermeasures and Facility Response Plans inspections in environmental justice areas; and
- Use their Airborne Spectral Photometric Environmental Collection Technology platform to provide continuous evaluation missions over disadvantaged communities.

In the incorporate environmental justice considerations section, EPA plans to:

- Map and analyze all TSDFs to identify potentially vulnerable communities and identify barriers to community engagement;
- Develop nationally consistent language and criteria for Superfund Enterprise Management Systems;
- Develop a white paper of current practices for considering environmental justice in risk assessment; and
- Provide EJSCREEN training for on-site coordinators.

The Agency will be taking comments on the draft but have not set an end date for the comment period. A copy and additional information can be found at <https://www.epa.gov/aboutepa/draft-environmental-justice-action-plan-epas-land-protection-and-cleanup-programs>.

EPA has accepted a petition alleging that North Carolina officials violated the civil rights of the residents of Duplin and Sampson Counties by issuing three animal waste management system permits and a permit to construct an anaerobic digester. In addition, environmental groups are asking EPA to find that Louisiana violated the civil rights of communities in St. John the Baptist Parish by permitting decisions that allowed “disproportionate air pollution and extremely high cancer risk caused by various manufacturing facilities...”

A group of Democrat Senators introduced a bill (S. 3507) that would authorize \$55 million over five years to “expand its online air quality toolbox with best-available monitoring technologies and associated uses of data, connect the toolbox with environmental justice mapping and screening tools...” Is too early in the process to determine whether this legislation will attract bipartisan support.

In November 2021, EPA Administrator Regan went on an environmental justice tour of Mississippi, Louisiana, and Texas. On January 26, 2022, Administrator Regan announced a series of actions as a result of this tour. These include releasing approximately \$79 million in funds to resolve drinking water needs in Mississippi, investing \$600,000 in mobile air monitoring in Mossville, St. James Parish, and St. John the Baptist Parish, Louisiana, requiring the Denka facility in St. John the Baptist Parish to install fence line monitors, requiring a more robust Environmental Impact Statement for the planned Formosa facility in St. James Parish, and formally rejecting Texas Commission for Environmental Quality’s risk value for ethylene oxide. More information can be found in the press release (<https://www.epa.gov/newsreleases/epa-administrator-regan-announces-bold-actions-protect-communities-following-journey>).

Copper smelter RTR proposed rule

On January 11, 2022, EPA published their risk and technology review (RTR) proposed rule for the copper smelter source category. EPA determined that the risks from this source category are unacceptable and is proposing additional requirements. In addition, EPA compiled a demographic analysis that indicated elevated cancer risks associated with the source category’s environmental justice communities, including low-income, Native Americans, and Hispanics. The proposed changes include additional emission limits and work practices. Under gap analysis (based on the *LEAN* decision), they are adding limits for PM as a surrogate for hazardous air pollutant metals and emission limits for mercury. They are also proposing test methods. EPA did not identify any developments in practices, processes, or control technologies during the technology review. As has been the past practice, EPA is proposing to remove startup, shutdown, and malfunction exclusions and require that test results be electronically reported.

EPA found the risk to be 80 in a million. The no-action level is 1 in a million. If the risks are 100 in a million, EPA (based on the Benzene NESHAP model) is required to develop additional restrictions. The Agency calculated a hazard index (HI) of 7 for arsenic (based on a one-hour Reference Exposure Levels at a residential location 4200 meters northeast of the Freeport facility).

Although EPA went through an extensive environmental justice analysis and several demographics (minority population, Native American population, Hispanic population, below the poverty level, and over 25 without a high school diploma) were higher than the national average, the stated decision for proposing more restrictive standards was based on the HI and 80 in a million being close to the 100 in a million action level. It is

not clear whether environmental justice issues actually played a part or not. Comments are due February 25, 2022.

NHSM proposed rule

In 2018, several industry groups petitioned the Agency to remove the restrictions on the use of certain railroad ties and paper recycling residuals as a fuel under RCRA. At the heart of this issue is the disposal of these materials. If the Agency grants the petition, these materials can be burned in a boiler as a fuel. If not, any disposal must be done in a solid waste unit. This group of industries would prefer being able to use these materials as a fuel rather than being required to disposed of them as a solid waste. On January 28, 2022, EPA proposed to deny this petition. Comments are due by March 29, 2022.

Listing 1-BP as a HAP

On January 5, 2022, EPA published a rule listing 1-bromopropane (1-BP) as a hazardous air pollutant (HAP). The rule becomes effective on February 4, 2022. The Agency understands that this rule will create some questions on what this means and has developed a Q&A document to address some of these questions. In general, the listing does not add emission limits under existing MACT rules. EPA will address the need for additional restrictions during the normal risk and technology review process (much like how the Agency is handling additional requirements under the *LEAN* decision). However, a facility must include 1-BP in its potential-to-emit calculation and that could change a facility from being an area source into a major source. Additional information can be found in the Q&A document (<https://www.epa.gov/system/files/documents/2022-01/1bp-q-and-a-document-final.pdf>). As a part of this effort, EPA will be developing an infrastructure for adding more chemicals to the list of HAPs and to further clarification additional steps to be taken once a chemical has been added. The most likely targets for this extended effort will be per- and polyfluorinated alkyl substances.

SSM SIP call

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. On January 12, 2022, EPA published a final action that ten states (Alabama, Arkansas, California, Illinois, Ohio, North Carolina, Rhode Island, South Dakota, Tennessee, and Washington) or air districts within those states and the District of Columbia had failed to submit SIP revisions. This ruling is effective on February 11, 2022. This action triggers a series of sanctions (including two for one offsets under the New Source Reduction program, restrictions in federal highway funding, and others). Each of these entities can resolve this by submitting a revised SIP that removes SSM provisions.

In the meantime, EPA is working to revise the Iowa, North Carolina, and Texas SIP rules promulgated by the Trump Administration that allowed SSM provisions. The original 2015 litigation has been restarted. States and Industry petitioners submitted their supplemental briefs on January 3, 2022. Agency and environmental intervenors supplemental briefs are due in February. A date for oral arguments has not been set.

Civil penalties increased

All federal agencies are required under the Federal Civil Penalties Inflation Adjustment Act of 2015 to adjust their penalties every January. This adjustment is based on a cost-of-living calculation from the previous year. The adjustment for 2022 is 1.06222. All 2021 penalties for EPA and OSHA were multiplied by this number to develop the 2022 civil penalties. EPA published their rule on January 12, 2022, and OSHA published their rule January 14, 2022. Additional details can be found in each notice.

EPA personnel

Based on Senate rules, all presidential nominees not acted upon by the end of each year are returned to the President and must be resubmitted. On January 4, 2022, President Biden resubmitted the nominations of Christopher Frey (Office of Research and Development), David Uhlmann (Office of Enforcement and Compliance Assurance), and Carleton Waterhouse (Office of Land and Emergency Management). On January 12, 2022, the Senate Environment and Public Works Committee favorably reported the nomination of Dr. Frey. His nomination has been put on Senate calendar. The committee did not schedule a vote for Mr. Uhlmann or Mr. Waterhouse in part based on the objections from Senator Cynthia Lummis (R-WY). She has concerns about the coal-fired power plant restrictions under the EPA's regional haze program. It is not clear how long it will take to resolve this dispute. The nomination of Amanda Howe (Office of Mission Support) has not yet been resubmitted.

TCEQ air monitoring after emergencies

On January 28, 2022, the Texas Commission on Environmental Quality (TCEQ) published a report on releases of emissions during startup and shutdowns before and after emergencies. These events included three hurricanes, one winter storm, and two accidents from 2017 until 2021. The measurement included data from fixed monitors and a variety of hand-held instruments used by TCEQ personnel. The measurement included one or more of 13 different chemicals. Based on 3.6 million monitoring data points, 23 measurements were higher than a health-based comparison value. A copy of the report can be found at <https://www.tceq.texas.gov/toxicology/aam-2017-2021>.

MWC litigation

In 2006, EPA finalized the large municipal waste combustor (MWC) rule. Several environmental groups sued alleging the Agency failed to develop adequate pollution

controls during the rulemaking. In 2008, the Agency agreed and took a voluntary remand, leaving the current rule in place. EPA has not worked on the rule since. On December 21, 2021, the petitioners filed a *writ of mandamus* with the U.S Court of Appeals for the District of Columbia Circuit asking the court to direct the Agency to propose revisions within 18 months. In addition, another group filed a petition in federal district court on January 13, 2022, asking the court to set a judicial deadline for EPA to review and revise the requirements for large MWCs. These facilities are regulated under section 129 of the Clean Air Act. That section requires the Agency to review and revise these standards every five years. The petition noted that a large percentage of these sources are in environmental justice communities.

Remote sensing of methane

ExxonMobil announced an agreement with Sceptor Inc. to develop an advanced satellite technology and proprietary data processing platforms to detect methane emissions. In the first phase, the companies will design and optimize a plan to measure methane emissions in the Permian Basin. The first satellites will be deployed in 2023 and will increase the coverage to 24 satellites over the following three years. The press release can be found at https://corporate.exxonmobil.com/News/Newsroom/News-releases/2021/1213_ExxonMobil-and-Sceptor-to-deploy-satellite-technology-for-real-time-methane-emissions-detection.

CRWI meetings

Our February 16-17, 2022, meeting will be virtual. Please contact CRWI (mel@crwi.org or 703-431-7343) if you have interest in attending.