



CRWI Update January 31, 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

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PFAS

In an effort to integrate their PFAS information, EPA has developed a new webpage as an extension of their ECHO database (<https://echo.epa.gov/trends/pfas-tools>). This tool includes information from the Clean Water Act discharges from permitted sources, reported spills, releases from facilities that manufacture or import PFAS compounds, federal locations where PFAS contamination is being investigated, transfer of PFAS-containing wastes, PFAS detection in surface or drinking water, and drinking water test results. The website lists several caveats for each section and when you start to use the tool. This is a mapping tool that is overlaid with the PFAS data EPA currently has available. The map starts at the U.S. level but can be focused to a region, state, or a single location. Colored symbols will point the user to where the Agency has data and whether that data is above the median, below the median, or non-detect. EPA has included a frequently asked questions section to help users.

EPA and other federal agencies have not settled on a uniform definition of PFAS compounds. Different agencies and even different offices within EPA use different definitions, depending upon their needs or desires. On January 3, 2023, several environmental groups sent a letter to EPA urging them to set the definition of PFAS as any compound containing “at least one fully fluorinated carbon.”

On January 6, 2023, EPA announced that nine additional PFAS compounds would be added to the TRI reporting list. EPA decided that four were no longer considered as confidential and thus should be added. The other five were added because the Agency has finalized toxicity values during 2022. Effected facilities should begin to track use of these new chemicals starting January 1, 2023, with reporting due July 1, 2024. This brings the total PFAS compounds subject to TRI reporting to 189. A list of the new chemicals can be found at <https://www.epa.gov/newsreleases/epa-requires-reporting-releases-and-other-waste-management-nine-additional-pfas>.

Environmental justice

New York’s Governor signed the “Cumulative Impacts Bill” on December 31, 2022. This bill requires the Department of

Environmental Conservation (DEC) to develop regulations to expand permit review requirements under state law to include both environmental justice and cumulative impacts. The law is set to take effect in late June, 2023. Under the law, DEC will be prohibited from approving actions that may cause or contribute to a disproportionate or inequitable burden to a disadvantaged community. This law is similar to the one enacted in New Jersey 2020. Other States have indicated an interest in passing similar legislation.

On December 29, 2022, the Massachusetts Department of Environmental Protection issued a proposed rule to require cumulative impacts analysis in air permitting in the state. This analysis will be required for minor sources if an environmental justice population is within one mile and for major sources if within five miles. In the proposed rule, an environmental justice population is defined as a neighborhood that meets one or more of the following criteria:

- Annual median income is less than 65% of state median annual income;
- Minorities comprise more than 40% of the population;
- Twenty five percent of the households lack English proficiency; and/or
- A combination of 25% or more minority population and the annual median income does not exceed 150% of the statewide annual median income

Massachusetts is accepting comments until April 7, 2023.

On January 11, 2023, EPA's Office of General Counsel released an addendum to the May 2022 "EPA Legal Tools to Advance Environmental Justice." The 2023 document provides further details and analysis on the Agency's legal authorities to address cumulative impacts on environmental justice communities. It includes examples where EPA has used authority in the past to address environmental justice concerns. Under the Clean Air Act provisions, EPA suggests that they have the authority to conduct residual risk reviews for minor sources and the Agency could use this authority to explore cumulative impacts on environmental justice communities. The document mentions using cumulative impacts when making siting decisions on solid waste combustion facilities and the ability of the Agency to reopen Title V permits should the Administrator find cause. The document states that cumulative impacts on environmental justice communities may be one reason for showing cause. According to the document, Section 303 of the Clean Air Act provides the Agency with broad authority to address "imminent and substantial endangerment" to public health, welfare, or the environment. The guidance suggests that this authority can be used regardless of whether the source is in compliance with current requirements. In the RCRA section, the guidance discusses the requirements in 40 CFR 270.10(l) that allows the permitting authority to require submission of additional information to determine whether current controls are adequate to protect human health and the environment. The permitting authority can consider proximity to potential sensitive receptors which the document related to overburdened communities. The document includes an example of where a site-specific risk assessment was used to add feed limits to a hazardous waste combustor as a model for where permits can be used to address environmental justice

concerns. The document also has examples where the permitting authorities can use Clean Water Act, Safe Drinking Water Act, CERCLA, and FIFRA to address environmental justice issues. EPA plans to release a separate draft on using cumulative risk assessment in the near future.

In their list of accomplishments, Region 6 stated they had created a regional map that identified more than 11,000 environmental justice census blocks. This represents 44% of all the census blocks in Region 6. They also stated that environmental justice and climate change principles were incorporated into their Colfax, SPOT, Matagorda, and Corpus Christi projects.

Lime kiln technology review

EPA developed the initial NESHAP rule for the lime kiln source category in 2004. The Agency set PM and opacity standards for the source category. In 2020, the Agency conducted a risk and technology review (RTR) and found no risks associated with the current emissions levels. During the final stages of that rulemaking, the U.S. Court of Appeals for the District of Columbia Circuit released the LEAN decision where it held that EPA is required to address unregulated emissions from a major source category when the Agency conducts the eight year technology review. During the data gathering portion of the 2020 RTR rule, the Agency found that this source category released HCl, mercury, organic HAPs, and dioxins. On January 5, 2023, EPA proposed a rule to amend the current regulations for this source category and set emission limits for these four pollutants. They are proposing to use total hydrocarbon as a surrogate for organic HAPs. The comment period closes on February 21, 2023.

Drum reconditioning

In September 2022, EPA released a report on the drum reconditioning industry (https://www.epa.gov/system/files/documents/2022-09/Drum_Reconditioner_Report_Final_Sept_2022_508.pdf). In this report, EPA identified 181 facilities that recondition drums and intermediate bulk containers, 106 that are currently active. The report estimated that 36% of the containers are reclaimed using burn-off ovens and the remaining 65% used a washing method. While “RCRA empty” containers are exempted from hazardous waste regulations, the report states that it is impossible to prevent non-empty containers from being delivered to these facilities and the current regulatory scheme does not have provisions for rejecting non-empty drums. The report goes on to state that 86 facilities have reported damage cases, 55 are listed in the Superfund database, and 13 have been on the National Priorities List. These damages include spills, explosions, fires, and employee injuries. The report also outlines an environmental justice component. Based on this report, EPA announced in their Fall 2022 (released January 4, 2023) Unified Agenda that they are developing an Advanced Notice of Proposed Rulemaking (ANPRM) scheduled for release in September 2023 “to obtain additional information on the industry as a whole, including waste management practices and more information about damage cases and their impact to nearby communities.” EPA believes it has identified a problem and plans

to use the ANPRM to further develop their justification for proceeding to rulemaking and to find ways to address this problem.

Civil penalty adjustment

The 2015 amendments to the Federal Civil Penalties Inflation Adjustment Act of 1990 requires all federal agencies to adjust their civil penalties based on the Consumer Price Index from the previous year. On January 6, 2023, EPA published a notice that all civil penalties under their jurisdiction would be increased by 7.745 percent. The details and the exact amounts can be found in the *Federal Register* notice. OSHA made the same adjustment to their civil penalties (published on January 13, 2023).

National compliance initiatives

Every four years, EPA selects several areas to focus resources where they believe there is widespread environmental non-compliance. They call these their national compliance initiatives. The national compliance initiatives for FY 2020-2023 are:

1. Creating cleaner air for communities by reducing excess emissions of harmful pollutants;
2. Stopping aftermarket defeat devices;
3. Reducing hazardous air emissions from hazardous waste facilities;
4. Reducing the risks of accidental releases at industrial and chemical facilities;
5. Reducing significant non-compliance in the National Pollution Discharge Elimination System program; and
6. Reducing non-compliance with drinking water standards at community water systems.

On January 12, 2023, EPA proposed national compliance initiatives for FY 2024-2027. EPA is proposing to drop initiatives 2 and 3 from the above list, retain the other four, and add two initiatives. EPA states that the hazardous waste facility initiative resulted in 362 actions including 101 enforcement cases. EPA is proposing to return this initiative to its core program at the end of FY 2023. The two initiatives added are mitigating climate change and PFAS contamination. While the focus on PFAS contamination is not completely clear, the one example given in the notice is focusing on PFAS manufacturers whose actions result in releases to the environment. Comments on these proposed changes are due on March 13, 2023.

EPA nominees

Nominations that require Senate confirmation must be completed within that session of Congress. Those not completed must be resubmitted in the next Congress. The Senate failed to act on the nominations of Joseph Goffman (Assistant Administrator for the Office of Air and Radiation), David Uhlmann (Assistant Administrator for the Office of Enforcement and Compliance Assurance), and Carlton Waterhouse (Assistant Administrator for the Office of Land and Emergency Management). On January 23,

2023, President Biden resubmitted the nominations for Mr. Goffman and Mr. Uhlmann. Mr. Waterhouse withdrew his name and announced he would be leaving his current position as Deputy Assistant Administrator in early February. Since the nomination hearings for Mr. Goffman and Mr. Uhlmann were held during the last Congress, the first part of their re-nomination process can move comparatively fast. In addition, getting the nominations out of Committee will be much easier with the Democrats holding a clear majority in the Senate. However, getting a Floor vote will continue to be a difficult process since any one Senator can put a Hold on a nomination, freezing the process until the issues with that Senator can be worked out.

PVC petition denied

In 2014, the Center for Biological Diversity (CBD) petitioned EPA to regulate discarded polyvinyl chloride (PVC) as hazardous waste. When EPA failed to act on the petition, CBD filed a deadline suit. CBD and the Agency agreed on a timetable for the Agency to act on the original petition. On January 12, 2023, EPA published their response. They are tentatively denying the petition but at the same time, they are asking for comments on that tentative denial. Comments are due on February 13, 2023.

Supplemental permit

In July 2022, the Georgia Environmental Protection Division issued a construction and operating permit for a wood pallet facility in Cook County. A local environmental group filed a petition to appeal that permit. Rather than litigate, the company entered into negotiations with the group and developed a settlement agreement (December 24, 2022) that is over and above the provisions in the Georgia permit. In essence, this is a private permit between the company and the local environmental group. The company agreed to provide quarterly reports to the environmental group during construction, provide monthly emission reports for the first year of operations, host public listening sessions, control fugitive dust, not operate heavy equipment between 8 pm and 6 am and not between 6 am and 1 pm on Sundays, construct noise abatement measures, donate Purple Air sensors and HEPA filters to the neighborhood, pay a \$25,000 “fine” should the company not resolve an issue within three days, and not start the second phase of construction if there are violations of the agreement. The company stated they were doing this to be a “good neighbor.”

IT3

The next IT3 Conference will be held on September 13-14, 2023, in Charlotte, NC. AWMA has put out a call for abstracts. If you would like to submit a paper, instructions can be found at <https://www.awma.org/IT3>.

CRWI meetings

Our next meeting will be on February 15-16, 2023, in Deer Park, TX. Please contact CRWI (mel@crwi.org or 703-431-7343) if you have interest in attending.