



CRWI Update July 31, 2020

MEMBER COMPANIES

Clean Harbors Environmental Services
Eastman Chemical Company
Heritage Thermal Services
INVISTA S.à.r.l.
3M
Ross Incineration Services, Inc.
The Dow Chemical Company
Veolia ES Technical Services, LLC

GENERATOR MEMBERS

Eli Lilly and Company
Formosa Plastics Corporation, USA

ASSOCIATE MEMBERS

AECOM
Alliance Source Testing LLC
B3 Systems
Civil & Environmental Consultants, Inc.
Coterie Environmental, LLC
Focus Environmental, Inc.
Franklin Engineering Group, Inc.
Montrose Environmental Group, Inc.
Ramboll
Spectrum Environmental Solutions LLC
Strata-G, LLC
SYA/Trinity Consultants
TEConsulting, LLC
TestAmerica Laboratories, Inc.
TRC Environmental Corporation
W. L. Gore and Associates, 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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EAB final rule

On July 22, 2020, EPA released the signed final rule to streamline the Environmental Appeals Board (EAB) review of permits. The final rule sets a 60-day deadline for the Board to release an opinion once the appeal has been fully briefed. It limits filing extensions to one request per party for a maximum extension of 30 days and would require amici briefs to be submitted within 21 days of the appeal. The final rule does not include language that requires parties to participate in alternative dispute resolution prior to the appeal to the Board. A copy of the pre-publication version can be found at <https://www.epa.gov/newsroom/streamlining-procedures-permit-appeals-rule>.

Boiler MACT proposed rule

The proposed rule to address the two boiler remands was signed on July 8, 2020. There are four main topics addressed in this proposed rule: revised emission limits for certain subcategories; an explanation for why carbon monoxide is a reasonable surrogate for non-dioxin organic hazardous air pollutants (HAP); an explanation why 130 ppm carbon monoxide is a reasonable threshold; and several technical corrections.

EPA is proposing to revise 34 new and existing source emission limits. This was required because the courts found that EPA improperly excluded certain sources when developing the limits in 2013. In proposing these limits, EPA followed what is now the standard method for calculating MACT emission limits under the Clean Air Act. They determined the number of sources in each subcategory, ranked them from the lowest emitter to the highest based on test averages, picked the top performers for existing sources based on 12% of the total number of sources (or 5 whichever is greater) in that subcategory, checked the distribution of the data (normal or log-normal), and then calculated the upper prediction limit (UPL) using either the normal or log-normal equations as dictated by the distribution of the data. Fuel variability factors were reviewed to see if modification to the UPL calculations was needed. This set the floor value for existing sources.

For new sources, EPA picked the top performer and went through the same calculation as for existing sources with two additional steps. The first additional step was to compare the UPL calculation to three times the representative detection level, choosing the higher value of the two as the floor. The second was to compare the floor value to the existing source limit for that subcategory. If it was more stringent, EPA proposed the limit calculated from the top performer. If it was less stringent, EPA went through an exercise to determine why that happened. In most cases it was because the variability within the data for the top performer was high. EPA then looked at the second-best performer (based on averages) to see if it had less variability and would have a floor less than the existing source floor. If it did, the Agency decided that the second-best average performer was a better performer because it had less variability.

Once this exercise was completed, EPA discovered that certain limits were less stringent than the comparable limits in the 2013 rule. EPA used compliance data from CEDRI to determine if these sources were routinely meeting the more stringent limits. Where they were, the Agency used their beyond-the-floor authority to propose setting the revised limits at the 2013 level.

When the court remanded the issue of CO as a surrogate, they asked the agency to look at alternative control technologies that reduce organic HAPs without impacting CO emissions. The preamble discusses two types of devices that may meet this criterion: combustion and recovery. Combustion devices discussed include thermal incinerators, catalytic incinerators, flares, and boilers/process heaters. Recover devices discussed included condensers, adsorbers, and absorbers. The Agency concludes that combustion is the more commonly applied technology for controlling organic HAPs and point out that some of the units being regulated in this rulemaking are also control devices for process vents. The preamble states that recovery methods are not applicable to all organic HAPs and are not effective on low concentration streams (less than 250 ppm). None of the best performers use any add-on alternatives for organic HAP control. EPA concluded that alternatives control technologies are not viable and CO is an adequate surrogate.

For the 130 ppm CO threshold issue, EPA interpreted the court remand as requiring responses in three areas; 1) why organic HAP emissions could not be further reduced once the CO emissions reached 130 ppm; 2) the Agency relied on formaldehyde data to support the 130 ppm threshold conclusion while in other parts of the rule, concluded the data was not a reliable indicator of organic HAP emissions at low levels; and 3) is there a non-zero level below which organic HAP levels cannot be further reduced. EPA addresses these three issues using a published paper on coal combustion and EPA research to support the Mercury and Air Toxic Standards rule.

In addition, EPA is proposing to make several technical corrections. Once published in the *Federal Register*, it will have a 60-day comment period.

2019 TRI data

On July 31, 2020, EPA announced that the preliminary 2019 TRI data are available. The preliminary dataset has undergone basic data quality checks. The Agency published this dataset to allow facilities to correct any errors. In September, the Agency will close the comment period and develop the final 2019 dataset that will be released in October. The Agency will use the October dataset to summarize and aggregate the data and make comparisons to releases from previous years. The National Analysis report is typically published in January of the following year. The preliminary dataset can be found at <https://www.epa.gov/toxics-release-inventory-tri-program/2019-tri-preliminary-dataset-0>.

Reclassification of major source final rule

On July 16, 2020, EPA sent the reclassification of major sources to area sources final rule to the Office of Management and Budget (OMB) for review. As proposed, this rule would allow a source to change from major to area at any time as long as they take enforceable limits on their HAP potential-to-emit to guarantee that annual emissions will be below the major source threshold. Expect a final rule to be released in mid-October.

PFAS disposal and destruction guidance

On July 27, 2020, EPA sent the interim guidance document on PFAS (per- and polyfluoroalkyl substances) disposal and destruction to OMB for review. The Agency is required to develop this document by the FY 2020 National Defense Authorization Act. The statutory deadline for the interim guidance is December 20, 2020. Once released by OMB, the Agency plans to release the document to the public for comments.

NAS PFAS workshop

EPA, the Department of Defense, the Department of Agriculture, and the Department of Health and Human Services have asked the National Academy of Sciences (NAS) to coordinate a workshop on the federal government's research efforts on PFAS compounds. NAS will convene a 2-day workshop in the Fall of 2020 to review current research and identify research and data gaps. Various federal agencies have ongoing research on better ways to understand PFAS chemistry; sample collection, compound identification and quantification; toxicity; fate and transport; occurrence and exposure; environmental removal and degradation; and treatment and disposal. The information gathered from the workshop will be released to the public after the workshop.

RTR rules

With several risk and technology review (RTR) rules either signed or published in the *Federal Register* in July, the Agency has completed 73 RTR rules. Based on the website (<https://www.epa.gov/stationary-sources-air-pollution/risk-and-technology-review-national-emissions-standards-hazardous#status>), they have nine more to

complete by October 1, 2021. In a new consent decree, EPA has agreed to 2022 deadlines for three additional RTR rules. In June, a district court gave EPA deadlines to complete the technology reviews for two source categories. While this court made it clear that once a risk review is completed for a MACT rule, it did not need to be repeated, they also made it clear that EPA is required to complete a technology review every eight years for every MACT rule. Should the Agency start to fall behind in other technology reviews, one should expect groups to file additional deadline suits.

SSM litigation

Based on a 2008 court ruling, EPA under the Obama Administration issued a 2015 action that deemed all state implementation plans (SIP) inadequate if they included either an affirmative defense or exclusions based on startup, shutdown, or malfunctions (SSM). This action was challenged by industry and currently being held in abeyance while EPA re-evaluates the 2015 action. Meanwhile, the Agency has finalized an action allowing Texas to include an affirmative defense in their SIP, an action to allow North Carolina to include SSMs in their SIP, and proposed to allow Iowa to use SSMs in their SIP. Environmental groups have challenged the two final actions for in the U.S. Court of Appeals for the District of Columbia Circuit. EPA tried to get the Texas and North Carolina venues changed but on July 16, 2020, the court denied that request. In addition, the order stated that these two cases plus the original 2015 case would all be heard by the same panel on the same day. The court ordered that the briefing in the Texas and North Carolina cases continue. Once briefing is completed, all three cases would be held in abeyance until EPA finishes their re-evaluation of the 2105 action.

EPA budget

On July 24, 2020, the House of Representative passed legislation to fund several cabinets and EPA. The bill passed by a 224-189 vote with no Republicans supporting the measure. It provides \$9.38 billion for EPA, an increase of \$318 million over FY 2020 and \$2.67 billion more than requested by the Administration. It includes language to block or prevent implementation of the legal basis for mercury controls for electric utility generation and the rollback of oil and gas sector methane rules and the science transparency rule. It also prevents EPA from pulling back the proposed rule to list perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) as hazardous substances under CERCLA and funds a study of the relationship between PFAS exposure and COVID susceptibility. The bill now goes to the Senate. It is not clear when the Senate will develop their version.

FY 21 NDAA

On July 21, 2020, the House of Representatives passed their version of the FY 2021 National Defense Authorization Act (NDAA). Several PFAS provision are included in the House version. These include a requirement that the Department of Defense (DoD) meet state cleanup standards when they exceed federal standards, publicly disclose the results of any groundwater testing, and bars DoD from purchasing any food packaging,

cookware, carpet, or personal care items that contain PFAS. It also provides \$15 million to the Center for Disease Control and Prevention to study the health effects of PFAS exposure and bans the use of incineration to destroy PFAS wastes until EPA finalizes their guidance on safe disposal as required in the FY 20 version of the bill. Efforts to add the requirement that PFOA and PFOS be included in the list of hazardous substances under CERCLA were not successful. The Senate version was passed on July 23, 2020. It does not include the ban on purchasing materials containing PFAS, the requirement to meet state standards, or the ban on incineration. These differences will need to be worked out in conference.

EPA offices re-opening

The majority of EPA personnel continue to telework. The Agency had started the re-opening process but the recent surge in cases has slowed or halted that process. The phases for re-opening start at 0 and go to 3 with most employees teleworking in Phase 0 and normal operations resumed in Phase 3. As of the end of July, headquarters and all 10 regions are in Phase 0 or 1. On July 31, 2020, EPA Administrator Wheeler announced that headquarters and Region 1 will move to Phase 2 on August 4. In Phase 2, offices are open and employees are expected to return to normal work schedules except those who have dependent care issues. Telework is still an option but must be cleared with a supervisor. In addition, EPA facilities in Traverse City, MI; Duluth, MN; Narragansett, RI; New Haven, CT; Helena, MT; Buffalo, Albany, and Syracuse, NY; Wheeling, WV; and Middleburg Heights and Westlake, OH will move into Phase 2. Facilities in Portland, Corvallis and Newport, OR; St. Thomas, VI; and Pierre, SD will be shut down for 7 days for disinfecting so they can move into Phase 1. Finally, all the Cincinnati, OH and Ann Arbor, MI facilities will be moving to Phase 1.

DuPont La Porte facility final settlement

In 2014, the DuPont La Porte facility had an accident that released nearly 24,000 pounds of methyl mercaptan and killed four workers. The company closed the manufacturing plant in 2016 and paid a \$3.1 million fine for violating the chemical accident prevention program. On July 13, 2020, EPA and TCEQ announced a consent decree to conclude the enforcement effort. The decree requires an additional civil penalty of \$3.195 million for RCRA violations (failure to make hazardous waste determinations; treatment, storage, or disposal of hazardous waste without a permit; and failure to meet land disposal restrictions), Clean Water Act violations (failure to implement the oil spill prevention plan), and Clean Air Act violations (failure to comply with emission standards at the biological water treatment unit). Although the manufacturing facility has been closed, the company continues to operate the wastewater treatment unit. As a part of the decree, Dupont will determine the extent of contamination around the impoundments on site and perform any necessary clean up.

Formosa St. James Parish complex

Formosa Petrochemical Corporation selected St. James Parish in Louisiana for a \$9.4 billion chemical manufacturing complex and purchased a 2,400-acre site along the west bank of the Mississippi River. Some residents of St. James Parish have opposed the project arguing that emissions from the facility once built would disproportionately impact people of color. In March, the local utility company started laying poles to bring power to the site at approximately the same time the Governor of Louisiana issued a stay-at-home order for COVID. This apparently surprised local residents who expressed concern that they were required to stay at home while Formosa was allowed to break ground on the project they opposed. Formosa issued a stop work order and no additional work was done. The residents filed a lawsuit to stop construction. In late July, Formosa agreed to suspend work on the project until February 2021 to allow the court to rule on the merits of the challenge. Plaintiff's brief is due on October 1 and defendants are to file by November 15.

Presidential politics

In a July 14, 2020, speech, presumptive Democrat presidential candidate Joe Biden laid out some of his environmental agenda if elected. There are a few new issues mixed in with the ones already raised by Mr. Biden or other Democrats during the primaries. The plan is built around the broad themes of modernizing infrastructure, promoting electric vehicles, carbon pollution-free power by 2035, energy efficiency in buildings, investment in clean energy innovation, sustainable agriculture, and environmental justice. A copy can be found at <https://joebiden.com/clean-energy/>. Meanwhile, the Data for Progress (a progressive think tank) has released their "wish list" for cabinet positions should Mr. Biden be elected. Their choices for EPA Administrator are Governor Jay Inslee (Washington) or Representative Alexandria Ocasio-Cortez (New York). Should Mr. Trump win re-election, the current EPA Administrator has expressed a preference to stay another 2-3 years to complete the de-regulatory agenda. In a recent interview, Mr. Wheeler specifically mentioned finishing cost-benefit and science transparency rules.

CRWI meetings

Our August 19-20, 2020, meeting will be virtual. Please contact CRWI (mel@crwi.org or 703-431-7343) if you have interest in attending.