MEMBER COMPANIES

Bayer CropScience
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

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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
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CRWI Update

July 31, 2023

HWC MACT RTR

To support the upcoming hazardous waste combustor (HWC) maximum achievable control technology (MACT) risk and technology review (RTR) rulemaking, EPA will be conducting an Information Collection Request (ICR). The ICR is intended to support the RTR process and to determine if there are any unregulated hazardous air pollutants. The ICR will be implemented in two phases. Phase 1 will be a questionnaire that will be sent to nine companies. Phase 2 will be a request for additional testing. Phase 2 will also be sent to nine companies but it may not be the same companies as Phase 1. EPA released a draft of the Phase 1 questionnaire on July 12, 2023 and held a virtual comment session on July 19, 2023. Comments on the draft were due on July 24, 2023. EPA's goal is to finalize the questionnaire and send it to the nine companies by the end of July/first of August. EPA has given no indications on who the nine companies will be. As drafted, the companies will be asked to respond within 60 days. The Agency plans to send out Phase 2 late in 2023 or early 2024. A copy of the draft questionnaire can be obtained from CRWI.

The Department of Justice (DOJ) filed their cross-motion on the HWC MACT RTR deadline suit on July 27, 2023. EPA acknowledges that it has missed the RTR deadline and stated that the purpose for the cross motion is to show the earliest time the Agency can complete the rulemaking. The cross-motion included a declaration from Penny Lassiter, the Director of the Sector Policies and Programs Division within the Office of Air Quality Planning and Standard. EPA projects it will need until August 14, 2025, to sign a proposed rule and until August 14, 2026, to sign a final rule. Plaintiff's reply is due on August 16, 2023, and EPA's reply is due on September 8, 2023. It is assumed that negotiations between the parties are continuing.

DoD lifts PFAS incineration ban

On July 11, 2023, the Department of Defense (DoD) released their interim guidance on the disposal and destruction of per- and polyfluoroalkyl substances (PFAS). This memo identifies four

commercially available options to destroy or disposal of materials containing PFAS. The four options, in order of consideration, are:

- Carbon reactivation units with environmental permits (for used granular activated carbon only);
- Hazardous waste landfills with environmental permits;
- Solid waste landfills with environmental permits that have composite liners and gas and leachate collection treatment systems; and
- Hazardous waste incinerators with environmental permits.

In addition, sites may consider on-site storage in hazardous waste units. For the incineration option, PFAS containing materials can only be sent to RCRA and Clean Air Act permitted hazardous waste incinerators. DoD concluded that the temperatures in these units are adequate to destroy PFAS compounds. To justify this decision, DoD cited work done with EPA's Rainbow Furnace, sampling done by New York State around the Norlite aggregate kiln, tests run by Clean Harbors, and a literature review. DoD acknowledges there are still some uncertainties associated with products of incomplete destruction. They also include a decision tree to help facilities choose the preferred treatment/disposal option. A copy of the guidance can be found at https://www.acq.osd.mil/eie/eer/ecc/pfas/docs/news/Memorandum_for_Interim_Guidance_on_Destruction_or_Disposal_of_Materials_Containing_PFAS_in_the_U.S.pdf. In a statement that followed the release of the memo, the Assistant Secretary of Defense for Energy, Installations, and Environment indicated that DoD would not restart incineration of PFAS containing materials for at least 45 days (from July 17, 2023) to allow for planning. DoD also plans to release additional guidance in the next few months on screening methods, a screening level policy, a review of sampling policy, and a method for data sharing. All of these will be posted at https://www.acq.osd.mil/eie/eer/ecc/pfas/index.html once available.

According to the trade press, EPA released a desk statement saying they had reviewed the DoD memo but continue to have reservations about the ability of high temperature incineration to be an effective destruction method because data on PFAS releases are lacking. EPA acknowledges that their research work has shown high destruction efficiencies with few detectable fluorinated products of incomplete destruction but expressed concern about applying these results to a full-scale incineration unit. EPA is scheduled to release their revised guidance in December of 2023.

Environmental groups have also criticized the DoD guidance because it continues to use landfills and incineration as disposal/treatment options instead of using non-thermal technologies such as super critical water oxidation.

RTRs

In July, EPA released two risk and technology review (RTR) proposed rules. On July 31, 2023, EPA published a proposed rule to expand the pollutants covered under the integrated iron and steel manufacturing source category. In this action, EPA is

proposing to require fence line monitoring for chromium, set new work practices for unregulated fugitive sources, reduce the opacity limits, set new emission limits for five currently unregulated pollutants (carbonyl sulfide, carbon disulfide, mercury, hydrochloric acid, and hydrogen fluoride) for sinter units, set new emission limits for three unregulated pollutants (hydrogen chloride, total hydrocarbons, and dioxin/furans) from blast furnaces and basic oxygen furnaces, and revise current limits for dioxin/furans and polycyclic aromatic hydrocarbons for sinter units. Comments are due on September 14, 2023.

On July 24, 2023, EPA published a supplemental proposed rule to add requirements to the primary copper smelters source category. After the 2022 proposed rule, EPA obtained information that additional pollutants were unregulated. As such, the Agency is proposing to revise the particulate matter standards, revise the mercury standards, and add emission limits for benzene, toluene, hydrogen chloride, chlorine, polycyclic aromatic hydrocarbons, naphthalene, and dioxin/furans. EPA will be accepting comments on these proposed changes until September 7, 2023.

Cost-benefit rule rescinded

In 2020, the Trump EPA codified a number of procedural requirements for the cost-benefit analysis for rules promulgated under the Clean Air Act. Some of the requirements in the 2020 rule were to separate benefits that occurred for the reduction of pollutants not directly regulated by the rule in question, a separate calculation of domestic and international climate pollution benefits, and the codification of certain best practices for conducting cost-benefit analyses. In 2021, EPA released an interim final rule that withdrew the 2020 rule. Several entities filed comments objecting to withdrawing the 2020 rule. On July 13, 2023, EPA finalized the interim rule with minimal changes. Additional details can be found in the *Federal Register* notice.

Emergency provisions removed

40 CFR Part 70 contains the regulations governing state operating permit programs. Part 71 contains the regulations for federal operating permit programs. On July 21, 2023, EPA published a final rule that, once effective, will delete paragraphs 70.6(g) and 71.6(g). These two paragraphs have the same language and allow these two programs to contain a provision where sources can claim an affirmative defense during an emergency. For this section, an emergency is defined as “any situation arising from sudden and reasonably unforeseeable events beyond the control of the source…” An emergency does not include noncompliance caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error. EPA’s position is that the 2014 decision from the U.S. Court of Appeals for the District of Columbia Circuit (*NRDC v. EPA*) requires them to remove any use of affirmative defense provisions. States will be given 12 months to remove these provisions from their state implementation plans. The final rule did not set a deadline for removing the emergency provisions from federal implementation plans. The rule becomes effective on August 21, 2023.

Major source reclassification proposed rule

In 1995, EPA developed a "once in, always in" policy that a source could reduce its emissions below the threshold and become an area source at any time prior to the compliance date for that source category. If a source failed to do this prior to the compliance date, that source would be a major source for the rest of its operating life. In 2018, EPA replaced the 1995 memo with a policy that a source could reclassify at any time as long as it took federally enforceable limits to keep it below the major source emission thresholds. That policy was codified in a November 19, 2020, rule. A proposed rule to rescind the 2020 rule and revert to the 1995 policy was sent to the Office of Management and Budget for review on July 17, 2023. This review typically takes 90 days.

E-manifest fees

EPA has announced the manifest fees for FY 2024 and FY 2025. The fees for scanned image uploaded, data + Image upload, and electronic manifests will be $22, $10, and $6, respectively. The fees for FY 2023 for scanned image uploaded, data + Image upload, and electronic manifests are $20, $13, and $8, respectively. More details can be found at https://www.epa.gov/e-manifest/e-manifest-user-fees-and-payment-information.

EPA personnel

On July 20, 2023, the Senate confirmed David Uhlmann to be the next Assistant Administrator for the Office of Enforcement and Compliance Assurance. The process took approximately two years. The vote was 53 to 46. There are four offices still operating under acting assistant administrators. These are Office of Air, Office of Environmental Justice and External Civil Rights, Office of Land and Emergency Management, and the Office of Mission Support.

Enforcement

On July 13, 2023, EPA issued a consent decree to Callon Permian LLC for tanks, flares, and other equipment. The emissions were originally identified using a helicopter equipped with an infrared camera that detects hydrocarbon leaks. The consent decree will require the company to take corrective actions at thirteen facilities in the West Texas Permian Basin. These include site-specific corrective actions to reduce emissions, inspections, equipment upgrades, and permitting and operations reviews. It also requires the company to conduct optical gas imaging surveys at each facility to ensure future compliance. The decree includes a $1,285,000 fine.

EPA's reactivation policy court decision

Hess Oil Virgin Islands Corporation started construction on the Limetree Bay Refinery, U.S. Virgin Islands, St. Croix in 1966. The refinery started operations in 1974, processing as much as 650,000 barrels of oil a day. Hovensa LLC took over operations of the facility in 1998. In 2011, Hovensa paid a $5.3 million penalty for Clean Air Act violations. In 2012, the company closed the refinery but continued to operate the storage terminals. In 2015, a joint venture obtained $1.25 billion in funding and purchased the property. In 2018, the Virgin Islands Department of Planning and Natural Resources authorized the new company to restart limited refinery operations and to begin processing low-sulfur fuel for maritime use. In 2020, EPA issued a final Plantwide Applicability Permit (PAL) to the facility. But before the facility could completely re-open, a new administration took office and on May 14, 2021, ordered the company to pause all operations citing imminent and substantial endangerment to public health or the welfare of the environment. The joint venture declared bankruptcy and a bankruptcy judge approved the sale of the facility for $62 million. The newest owners asked EPA to reopen the facility under the 2020 PAL.

On November 17, 2022, EPA denied that request and instead told the facility they would need a new prevention of significant deterioration (PSD) permit based on the reactivation policy. This policy was developed in 1999 from a court decision on reactivation of a shutdown power plant (Monroe Electric). EPA determined that the refinery was permanently shut down in 2012 and that restarting the unit qualifies as construction of a new major stationary sources. This determination was challenged in the U.S. Court of Appeals for the 3rd Circuit. On July 23, 2023, the court determined that EPA overstepped their authority and reversed EPA's decision. In the opinion, the court stated that the Clean Air Act limits the Prevention of Significant Deterioration to newly constructed or modified sources and this source was clearly not a new source nor had it undergone modification as defined in the Act. This ruling will limit the Agency's use of this policy to require more stringent provisions.

Court denies PEER challenge to corrosivity rule

EPA set the upper pH limit for the corrosivity characteristic at 12.5 in 1980. In 2011, the Public Employees for Environmental Responsibility (PEER) submitted a rulemaking petition asking the Agency to change that value to 11.5. EPA denied the petition in 2016. PEER challenged this and on July 14, 2023, the U.S. Court of Appeals for the District of Columbia Circuit released an opinion that upheld the denial. In the opinion, the court rejected several of the claims because PEER failed to file them in a timely manner. For the claims that were timely, the court deferred to EPA's judgement that was used to deny the petition.

Environmental justice

During the July 18, 2023, engagement call, a senior EPA official announced that each region would open a stand-alone environmental justice office to essentially mirror the

headquarters Office of Environmental Justice and External Civil Rights. He indicated that each of the regional offices would also work on the National Environmental Policy Act, children's health, and public engagement. These offices are to be staffed with new hires. Also during the call, another EPA official discussed a revision to the more than 20 year old public participation policy. EPA will solicit input from staff and management in August and then from outside groups. They anticipate releasing the revised guidance in early 2024.

PFAS

The U.S. Geological Survey (USGS) collected tap water samples from 716 locations across the U.S. and tested them for 32 individual per- and polyfluoroalkyl substances (PFAS) compounds. These locations included 269 private wells and 447 publicly-owned water systems. Seventeen PFAS were detected at least once with perfluorobutanesulfonic acid, perfluorohexanesulfonic acid, and perfluorooctanoic acid occurring most frequently. At least one PFAS compound was detected in approximately 45% of the sample locations. When you look at the map provided on the website (https://www.usgs.gov/news/national-news-release/tap-water-study-detects-pfas-forever-chemicals-across-us), the majority of the detections were in urban areas. From this data, USGS estimated that the probability of PFAS being observed in tap water is about 25% in rural areas and around 75% in urban areas.

EPA published a draft Integrated Risk Information System (IRIS) assessment for perfluorohexanesulfonic acid on July 24, 2023. The draft reference dose is 4×10^{-10} mg/kg/day. EPA will be taking comments on this draft until September 22, 2023.

On July 7, EPA's Office of Research and Development released a final reference dose for perfluoropropanoic acid of 5×10^{-4} mg/kg/day. A copy of the report can be found at https://cfpub.epa.gov/si/si_public_record_Report.cfm?dirEntryId=358291&Lab=CPHEA.

The Department of Defense released the results of their multi-laboratory analysis of draft Method 1633 on July 25, 2023. Shortly after, EPA released the fourth draft of the Method. This draft incorporates the quality control criteria for all aqueous matrices (surface water, ground water, and waste water) as derived from the Department of Defense study. The method is not required to show compliance until the Agency completes the rulemaking process. However, EPA is recommending its use in individual permits. EPA anticipates completing the quality control criteria for all eight environmental matrices (wastewater, surface water, groundwater, soil, biosolids, sediment, landfill leachate, and fish tissue) by the end of 2023. A copy of the fourth draft and the Department of Defense report can be found at https://www.epa.gov/cwa-methods/cwa-analytical-methods-and-polyfluorinated-alkyl-substances-pfas#draft-method-1633.

NDAA

The House and Senate passed their versions of the National Defense Authorization Act (NDAA) in July. Neither version contains any significant changes to the current Department of Defense restrictions on disposal or treatment of PFAS containing wastes. The Senate PFAS legislation currently being developed by the Environment and Public Works Committee was not completed in time to be included in the Senate version. The Senate and House versions will now go to committee to resolve the differences. New provisions are seldom added during this negotiation.

EPA appropriations

Legislation to fund EPA for FY 2024 has been passed out of Committee by both the House and the Senate. The House version would provide EPA with $6.173 billion. This is $3.96 billion less than was enacted for FY 2023 and $5.91 billion below the president's request. The Senate version (S 2605) would fund EPA at $9.9 billion, only slightly less than current funding. Both bills now go to their respective floors where they may be amended. Once passed by both houses, differences will need to be worked out. While this process is far from over, it appears that EPA will not be getting large increases in funding for FY 2024 but will possibly take some cuts. The levels of those cuts are still to be determined.

CRWI meetings

Our next meeting will be on August 16-17, 2023, in Painesville, OH. Please contact CRWI (mel@crwi.org or 703-431-7343) if you have interest in attending.