



CRWI Update July 31, 2024

MEMBER COMPANIES

Bayer CropScience
Clean Harbors Environmental Services
Eastman Chemical Company
Formosa Plastics Corporation, USA
Heritage Thermal Services
INV Nylon Chemicals Americas, LLC
Ross Incineration Services, Inc.
The Dow Chemical Company
Veolia ES Technical Solutions, LLC
Westlake US 2, LLC

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Eli Lilly and Company
3M

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AECOM
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B3 Systems
Civil & Environmental Consultants, Inc.
Coterie Environmental, LLC
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Eurofins TestAmerica
Focus Environmental, Inc.
Franklin Engineering Group, Inc.
Montrose Environmental Group, Inc.
Ramboll
Spectrum Environmental Solutions LLC
Strata-G, LLC
TEConsulting, LLC
Trinity Consultants
W.L. Gore and Associated, 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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Supreme Court decisions

There are two recent Supreme Court decisions that will have a significant impact on the regulatory universe. The first was the Loper decision where the Court overturned the Chevron Doctrine. This ruling was discussed in the June 2024 Update. The immediate ramification was that the Supreme Court sent nine cases back to their respective courts for further consideration. It will take some time for the longer-term ramification to be understood as the lower courts work their way through these cases and new litigations alleging agencies exceeded their jurisdiction. One should remember that this ruling will cut both ways. Both industry and environmental groups are looking to use the Loper decision to further their agenda.

The second was the Corner Post decision. This decision changed the deadline for when a party can challenge an agency action. Under the Administrative Procedures Act, a party has six years to file a lawsuit. Before the Corner Post decision, the courts held that the six-year window was based on when the agency published a “final action.” In a 6-3 decision, the Supreme Court ruled that the six-year window should begin when the entity was first injured by the action. Depending upon the circumstances, this could expand the window for challenges.

As always with court decisions, it takes time to determine what the impacts will be. Subsequent litigations may or may not provide clarification but they always provide opportunities.

HWC MACT

As of July 31, 2024, the judge had not released his decision on the deadline suit. EPA continues to work on the risk and technology review rule based on issuing an August 2025 proposed rule.

On July 24, 2024, EPA published a proposed rule to modify certain provisions within 40 CFR Part 63, Subpart EEE. Specifically, the Agency is proposing to:

- Remove or revise the provisions associated with emission limit exemptions for periods of malfunction;

- Amend the emergency safety vent provisions;
- Add electronic reporting provisions; and
- Remove the requirement that a facility must get permission to use of Method 23 to determine compliance with the dioxin standards.

Additional details can be found at <https://www.epa.gov/stationary-sources-air-pollution/hazardous-waste-combustors-national-emission-standards-hazardous>. Comments are due on or before September 9, 2024.

E-manifest final rule

On July 26, 2024, EPA published amendments to their E-manifest regulations. These amendments made changes to the manifest regulations for the shipment of hazardous waste that are exported for treatment, storage, and disposal; the international movement documents; the requirements for Discrepancy, Exception, and Unmanifest Waste Reports; and the manifest requirement for polychlorinated biphenyls. The effective date for this rule is January 22, 2025. Additional details can be found in the *Federal Register* notice.

Enforcement scams

EPA's Office of Inspector General (OIG) issued a warning that certain entities are sending fraudulent EPA Notices of Violations. The letters allege that a business has violated environmental regulations and gives an email or phone number for a response. These emails have an address that uses an "epa.services" domain name. EPA's domain name is epa.gov. OIG is recommending that anyone who receives such a letter should contact the Office of Enforcement and Compliance (OECA.Communications@epa.gov) and include a copy of the letter. A complaint can be filed at <https://www.epaoig.gov/epa-oig-hotline-complaint-form>, emailed to OIG.Hotline@epa.gov, or by calling 888-546-8740.

RMP rule litigation in abeyance

When the industry groups challenged the risk management plan (RMP) final rule in May, they also filed a petition for reconsideration and a request for a stay of the effective date of the rule while the Agency considers the petition. The challengers asked the Agency to reconsider certain aspects of the safer technology and alternatives analysis, the expanded requirements for disclosure of sensitive information, the inclusion of unnecessary employee participation, and the requirement for new monitoring provisions. They also asked for a 120-day stay of the effective date. On July 29, 2024, EPA and the industry parties asked the court to hold the case in for abeyance for 120 days to allow the Agency time to consider the concerns raised by the petition for reconsideration. The intent was to delay briefing until the Agency has considered the petition. If the Agency decides to accept the petition, the briefing will be delayed until a

new final action is completed. The request for abeyance was granted the next day. The Agency has not responded to the request to delay the effective date for the rule.

CSB recommendation for remote monitoring equipment

Based on a series of incidents where responders were unable to isolate or cut off spills or where responders were put into danger when responding to the incident, the Chemical Safety and Hazards Investigation Board (CSB) released recommendations to EPA and OSHA to add requirements to their programs to allow for remote isolation or responses to spills. For EPA, the report recommends that the Risk Management Program be expanded to allow for remote activation from a safe location or a system where shutoffs are automatic when a release occurs. For OSHA, the report recommends modification to the Process Safety Management requirements to make the same changes. While both agencies are not required to follow CSB recommendations, they often result in modifications to the requirements. Additional details can be found at https://www.csb.gov/assets/1/6/csb_ripe_study_finalv.pdf.

California SB 674

SB 674 has passed the California Assembly and is currently waiting on a concurring vote by the California Senate. If enacted as currently written, this bill would expand the fence line monitoring requirements for oil and biofuel refineries. It would include monitoring for 18 chemicals, require third party auditing of the monitoring system, require identification of root causes for excess emissions, require public notification when thresholds are exceeded, and make data from fence line monitors publicly available, among other things. A copy can be found at <https://trackbill.com/bill/california-senate-bill-674-air-pollution-covered-facilities-community-air-monitoring-systems-fence-line-monitoring-systems/2371864/>.

PFAS

Early in July, EPA posted their revisions to OTM-45. This version is labeled "Revision 1" and can be found at <https://www.epa.gov/system/files/documents/2024-07/other-test-method-45-rev1-final-1.pdf>. Some of the changes include the proper use of polytetrafluoroethylene, expanding the number of pre-sampling standards from two to five, making field blanks optional, and providing guidance on how to report fractions below the detection levels. EPA also appears to be accelerating the release of OTM-55, an air sampling method for non-polar, semi-volatile PFAS compounds. However, an estimated time for release has not been announced.

The final rule adding perfluorooctanoic acid (PFOA) and perfluorooctane sulfonic acid (PFOS) to the list of hazardous substances under CERCLA became effective on July 8, 2024. Superfund sites must now include these two compounds in any All Appropriate Inquiry evaluations. The recent finalization of drinking water guidelines for these two compounds will likely become the default clean-up levels. This idea is reinforced by the Army and the EPA agreeing to a pilot program to test drinking water wells around nine

bases and to respond if the levels exceed the current drinking water guidelines. Industry is challenging this rule in court but that process will likely take two or more years.

In April 2023, EPA published an advanced notice of proposed rulemaking asking for information on adding more per- and polyfluoroalkyl substances (PFAS) to the list of hazardous substances under CERCLA. At the time, the projected date for the proposed rule was April 2025. In the Spring 2024 Regulatory Agenda, that date has been changed to “To Be Determined.” This prompted a letter from the Chair of the House Energy and Commerce Committee to the EPA Administrator asking how and when the Agency plans to carry out rulemakings to designate additional PFAS compounds as hazardous substances under CERCLA. The letter requested a timetable as well as a list of candidate PFAS compounds. The letter requested a response by July 26, 2024. The trade press has not reported on whether the Agency has responded.

EPA released their final Integrated Risk Information System (IRIS) evaluation for perfluorodecanoic acid. The final organ specific reference dose is 2×10^{-9} mg/kg/day. This value was slightly higher than what was proposed. A copy of the report can be found at <https://iris.epa.gov/document/&deid=361797>.

The World Health Organization’s (WHO) provisional drinking water guidelines are less stringent than are EPA’s. For example, the WHO drinking water guideline for PFOA is 100 ppt as compared to EPA’s 4 ppt. WHO has received considerable pressure from stakeholders to revise their guidelines. In June, they proposed to set up an expert panel to provide advice on revisions to their guidelines.

Maryland passed a law that requires their Department of the Environment to develop PFAS action levels and take steps to address their discharge from industrial sources. This law took effect on July 1, 2024.

Minnesota is proposing a draft permit that would require 3M’s Cottage Grove facility to remove certain PFAS compounds to below the detection levels in wastewater and stormwater discharges.

Environmental justice

EPA released EJSCREEN 2.3 on July 11, 2024. The Agency held training webinars for the new version on July 4th and 10th. The next “office hour” for EJSCREEN is August 21, 2024. Recordings of the July training webinars and information on their “office hour” can be found at <https://www.epa.gov/ejscreen/ejscreen-office-hours-training>.

In May, the South Baltimore Community Land Trust sent a petition to EPA alleging that the City of Baltimore and the Department of Public Works discriminated against several Black and Hispanic communities in approving and implementing their 2024-2033 solid waste management plan. The specific complaint includes emissions from a local waste-to-energy facility. EPA conducted a preliminary review and found that the petition met

the Agency's jurisdictional requirements and formally opened an investigation on July 12, 2024.

The initial grants from the Inflation Reduction Act were awarded in July. Approximately \$325 million was awarded to 21 entities. These included funds to install wastewater treatment systems in rural Alabama, provide lead abatement for 600 houses in south Los Angeles, provide home weatherization and energy efficiency in the upper Midwest, and urban forestry in Pittsburg. EPA stated that the awards would continue until all of the \$2 billion have been committed. Additional details can be found at <https://www.epa.gov/newsreleases/biden-harris-administration-announces-more-325-million-environmental-and-climate>.

EPA funding for FY 2025

The House of Representatives passed their version of the funding legislation for EPA (H.R. 8998) on July 24, 2024, by a 210-205 vote, mostly along party lines. This version would set EPA's FY 2025 funding at 7.36 billion which is a 20% lower than FY 2024. The Senate version of EPA's appropriations legislation passed out of committee by a 28-1 vote. The Senate's version would fund the Agency at \$9.29 billion, slightly higher than the FY 2024 funding level. The House has recessed for their traditional August break. The Senate will recess August 5 for their break. Neither will be back in session until after Labor Day. The House has passed six of the 12 appropriations bills while the Senate has not passed any. The fiscal year ends on September 30, 2024. It is unlikely that any of the appropriations bills will be completed by this date making a continuing resolution necessary for the government to continue to operate past September 30. According to Wikipedia (https://en.wikipedia.org/wiki/Continuing_resolution), Congress has only met the fiscal year deadline four times since 1977, with the last being in 1997. President Biden has threatened to veto any legislation that significantly reduces EPA's funding.

Climate change

EPA has released its fifth edition of *Climate Change Indicators in the United States* (<https://www.epa.gov/climate-indicators>). This edition includes historical data and observed trends to either the causes or effects of climate change. It includes discussions on worldwide temperatures, heat waves, heat-related deaths, sea surface temperature, wildfires, coastal flooding, and more.

CRWI meetings

Our next meeting will be on August 21-22, 2024 in Defiance, OH. It will include discussions on the upcoming HWC MACT RTR proposed rule and a tour of the Holcim Cement kiln operations in Paulding. Please contact CRWI (mel@crwi.org or 703-431-7343) if you are interested in attending.