



## CRWI Update June 30, 2017

### MEMBER COMPANIES

Clean Harbors Environmental Services  
Dow Chemical U.S.A.  
E. I. Du Pont de Nemours  
Eastman Chemical Company  
Heritage Thermal Services  
INVISTA S.à.r.l.  
3M  
Ross Incineration Services, Inc.  
Veolia ES Technical Services, LLC

### GENERATOR MEMBERS

Eli Lilly and Company  
Formosa Plastics Corporation, USA

### ASSOCIATE MEMBERS

AECOM  
Alliance Source Testing LLC  
Amec Foster Wheeler PLC  
B3 Systems  
Coterie Environmental, LLC  
Focus Environmental, Inc.  
Franklin Engineering Group, Inc.  
METCO Environmental, Inc.  
O'Brien & Gere  
SGS North America, Inc.  
Strata-G, LLC  
SYA/Trinity Consultants  
TestAmerica Laboratories, Inc.  
TRC Environmental Corporation

### 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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### Boiler litigation

In a June 26, 2017, order, the Supreme Court denied American Municipal Power's petition to review the U.S. Court of Appeals for the District of Columbia Circuit's ruling on the regulation of malfunctions in the boiler rule. This allows the District of Columbia Circuit's ruling that the Agency can require facilities to meet emission limitations during malfunctions to stand and allows the use of enforcement discretion to deal with any excess emissions during malfunctions. This completes the litigation for the original boiler rule.

There is one more lawsuit on the boiler rule. In this suit, environmental groups are challenging the use of a 130 ppm CO threshold and the use of work practices instead of emission limitations during startup and shutdown. Oral arguments for this litigation are scheduled for September 15, 2017.

### RTR rules

EPA is currently under court orders to complete 37 risk and technology review (RTR) rules by 2020. The Community In-Power and Development Association filed suit in U.S. District Court asking the court to require the Agency to complete an additional nine RTR rules within the next two years. The source categories included in this lawsuit are mercury cell chloralkali plants, semiconductor manufacturing, cyanide chemicals manufacturing, spandex production, carbon black production, primary copper smelting, flexible polyurethane foam fabrication operations, refractory products manufacturing, and primary magnesium refining. In a June 15, 2017, filing, EPA asked for a staggered schedule that would allow them to complete the nine rules by July 2024. This filing gives a detailed look at the 39 RTR rules the Agency is currently working on. EPA has a October 16, 2017, deadline for the publically owned treatment works RTR rule, a July 15, 2018, deadline for the Portland Cement RTR rule, an October 1, 2017, deadline for the pulp and paper combustion sources RTR rule, a March 13, 2020, deadline for 20 source categories, and a June 30, 2020, deadline for an additional 13 source categories. In addition, EPA is working on the coke ovens and large municipal waste combustor RTR rules.

It should be noted that in the deadline suits for the 20 and 13 source categories, the two parties made the same arguments as are being made in the current litigation: the environmental groups asking for a two year deadline, and EPA asking for a longer, staggered schedule. In both the 20 and 13 rule cases, the judge compromised and gave the Agency a three year schedule.

Shortly after the judge set the deadlines for the 20 source categories, the Agency appealed this decision to the U.S. Court of Appeals for the District of Columbia Circuit. However, the Agency withdrew this appeal shortly after it was filed.

The Agency has made it clear they will meet whatever deadline the court gives them. EPA had completed 56 of 118 RTR rules. The immediate impact of the deadlines will be to limit the amount of emissions data collected. The Agency will not have time to go through a formal information collection request (ICR) since that process takes at least a year. Thus, they will be limited to asking for information from nine entities, rely on data it already has, or relying on data that is volunteered.

To further complicate the process, EPA's Science Advisory Board held a meeting on June 29-30, 2017, to discuss EPA's risk assumptions when conducting RTRs. In general, the Board approved EPA's use of a tiered screening approach to distinguish sources where risk is low from the sources that require a more in-depth analysis. However, they questioned whether EPA's screening level assumptions were too conservative, creating unneeded work. Environmental groups in attendance disagreed with the panel's view that the approach is too conservative. In addition, the Board questioned EPA's focus on lakes rather than other waterbodies and how that may impact the estimates of exposure for subsistence fishermen. In recent years, EPA has also added an urban gardener scenario. Environmental groups support the urban gardener scenario but suggest that it does not go far enough to protect children from health risks from contaminated soils.

### **RMP compliance date extended**

After the West, TX fertilizer plant explosion that killed 15 people, President Obama issued an Executive Order telling federal agencies to look at options to improve risk management practices at chemical facilities. In response, EPA published a final rule on January 13, 2017, updating risk management plan (RMP) requirements. Shortly after the rule was published, the report of the West incident concluded it was caused by arson. When Mr. Trump took office, the effective date for this rule was extended until March 21, 2017. During this time, a group of industries and states filed petitions for reconsideration. These petitions were granted and the Administrator extended the effective date for another 90 days. During this 90 day period, EPA took comments on a proposed rule to further extend the effective date while the Agency reconsidered the rule. On June 14, 2017, EPA published a final rule extending the effective date until February 19, 2019, to allow them time to complete the reconsideration process. There are indications that the Agency may make significant changes in the rule during this process. The *Federal Register* notice states that "Many of the decisions underlying the

Amendments are policy preferences based on weighting factors in the record that could be rationally assessed in different ways.”

On June 14, 2017, several environmental groups filed a petition for review of this final rule with the U.S Court of Appeals for the District of Columbia Circuit. While petitions for review do not contain detailed challenges, it is likely these groups will argue that delaying this rule violates federal laws and puts workers and communities at risk for future disasters. EPA will likely respond that this is not a final action but a delay in the effective date so they can reconsider the rule. Unless the expedited briefing is granted, it is likely that EPA will complete the reconsideration process before the Appeals Court has time to make a decision.

### **Portland Cement HCl CPMS extended**

When EPA promulgated the Portland Cement MACT rule (February 12, 2013), facilities were required to comply with the HCl emission limitations using either CEMs or operating parameter limits set during testing if the unit used a wet scrubber, a dry scrubber, or a tray tower. Because of a shortage of NIST traceable calibration gases at higher HCl concentrations, the HCl CEMs requirement was temporarily modified (July 25, 2016) to a CPMS (continuous parameter monitoring system) requirement. Under this option, a facility was required to install and operate an HCl CEMs but is not required to calibrate the instrument. Instead, the facility treats the CEMs as any other continuous monitoring device. That is, an operating limit is established based on the average of three test runs. This modification was for one year to allow suppliers to solve the problems in obtaining higher concentration NIST traceable HCl gases. Due to continued problems, the Agency published a direct final rule and associated proposed rule (June 23, 2017) extending the CPMS option until these calibration gases become available. Unless adverse comment is received by July 3, 2017, the rule will become final on July 5, 2017.

### **Federal facilities hazardous waste compliance docket**

On June 6, 2017, EPA published the thirty first update of their Federal Agency Hazardous Waste Compliance Docket. This docket is required under the Comprehensive Environmental Response, Compensation, and Liability Act. It identifies all federal facilities that manage hazardous waste or from which a reportable quantity of hazardous waste has been released. This update includes 33 additions, one correction, and 13 deletions. Additional information can be found in the *Federal Register* notice.

### **EPA personnel**

On June 13, 2017, the Senate Environment and Public Works Committee held their confirmation hearing for Susan Bodine to be the next Assistant Administrator for EPA's Office of Enforcement and Compliance Assurance. The Committee is scheduled to vote on her nomination on July 12, 2017. Ms. Bodine is expected to be approved by the Committee but her nomination may be delayed due to questions on EPA's

responsiveness to Congressional oversight queries. Once approved by the Committee, the nomination will go to the entire Senate for confirmation.

The Trump Administration has not submitted any other nominations for second tier positions at EPA (Assistant Administrators or Deputy Administrator). In fact, there are very few rumors of who will be nominated for any of these positions. The Congressional Research Service reported that Mr. Trump has submitted 242 civilian nominations by June 30, 2017, and has had 50 nominees confirmed. This is a much slower pace than for other recent Administrations. For example, by June 30, President Obama had 186 nominees confirmed, President George W. Bush had 133 confirmed, President Clinton had 198, and President George H.W. Bush had 148. These lower numbers are due to two factors: the slower pace for submitting nominations; and the slower pace for the Senate actually confirming nominees.

Under each political appointee that requires Senate confirmation, there is a next level of political appointees that do not require confirmation. For example, there are 13 political appointed positions within EPA that require Senate confirmation but 51 that do not (this includes the 10 Regional Administrators). Typically, a President will get the 13 Senate confirmed positions in place and allow those people to help pick their staff (the next level of political appointees). This Administration seems to be bucking the trend by making a number of Deputy Assistant Administrator appointments prior to getting the Assistant Administrators nominated. Deputy Assistant Administrators have been appointed for the Office of Enforcement and Compliance Assurance, the Office of General Counsel, the Office of Water, the Office of Land and Emergency Management, the Office of Chemical Safety and Pollution Prevention, and the Office of Research and Development. At this time, each of these offices has an Acting Assistant Administrator (from the Civil Service ranks) but the political appointees will most likely be making all policy decisions. It does not appear that Mr. Trump sees the need to quickly fill some of the Senate confirmable positions.

Meanwhile, EPA continues to move forward with their plans to encourage voluntary departures of its employees. In a June 20, 2017, internal email, EPA attorney Robert Coomber indicated the Agency has set a cap of 1,228 employees that will be eligible for either the Voluntary Early Retirement Authorities and/or the Voluntary Separation Incentive Program. The email states that personnel will be notified in July on which positions are eligible for either program.

### **Gold King Mine spill**

In 2015, an EPA contractor was exposing the blockage to the entrance to the Gold King Mine when a blowout of about 3 million gallons of wastewater occurred. This contaminated several miles of the Animas River. On June 12, 2017, EPA's Inspector General released a new report ("Gold King Mine Release: Inspector General Response to Congressional Requests") finding no misconduct by federal officials in the lead-up to the spill or the response to the spill and offered no recommendations on how to prevent future spills other than steps that have already been taken. The report found that EPA

was not required to conduct direct testing of the water levels or the pressure in the mine and given the circumstances, it was not clear whether the Agency should have conducted testing. A copy of the report can be found at <https://www.epa.gov/office-inspector-general/oig-reports>.

## **Enforcement**

In 2015, EPA and General Electric (GE) reached a settlement agreement to resolve alleging violations at their Waterford, NY hazardous waste incinerator. During an inspection in 2008, the inspector noticed that the facility operator would switch the unit to “calibration mode” right before the AWFCO (automatic waste feed cut-off) system would engage. This would disabled the AWFCO system and allow the unit to continue to operate. The operator would maintain the unit in the “calibration mode” until the event cleared. Upon further investigation, it was determined that this was a “routine practice” for this unit, occurring at least 1,859 times from September 2006 until December 2007. To resolve this complaint, General Electric agreed to pay a \$2.25 million civil penalty. This complaint ended in 2007 because the unit was transferred to Momentive Performance Materials (MPM). On May 4, 2017, EPA announced a settlement agreement with MPM for similar use of a “calibration mode.” According to the settlement agreement, MPM employees used the “calibration mode” at least 4,213 times during 2007 and 2008. (Note: the overlap in the dates for GE and MPM actions is not easily resolved based on the settlement agreements.) Since none of these events were reported, MPM was falsely attesting compliance with RCRA, Clean Air Act, and the permits issued. By the end of 2008, MPM had ceased the practice, modified the system to prevent operators from manually overriding the AWFCO system, and implemented a new calibration procedure. In addition, MPM will pay a \$1.25 million civil penalty.

On June 6, 2017, the Department of Justice published a proposed settlement agreement with Alon USA for violations of the benzene NESHAPs and volatile organic compounds in connection with their leak detection and repair program at their Big Spring, TX refinery. Under the proposed settlement agreement, Alon will reduce emissions from their boilers, process heaters, flares, and a fluidized catalytic cracking unit. In addition, Alon will fund a supplemental environmental program to reduce nitrogen oxide emissions and pay a \$456,250 civil penalty.

On June 29, 2017, the Department of Justice published a proposed settlement agreement with Lima Refining Company for violations at their Lima, OH refinery. Under the proposed settlement agreement, the company will implement an enhanced leak detection and repair program, update their CEMs calibration and maintenance program to improve uptime, properly control the emissions from flares, and upgrade their sulfur recovery plant. Lima will also fund a lead paint abatement program and install oxygen enrichment at two of its sulfur recovery units. In addition, the company will pay a \$1 million civil penalty.

## **Village Green projects**

On June 15, 2017, EPA announced their eighth Village Green Station in Houston, TX. A Village Green Station is a solar powered air monitoring station fitted into a park bench. These stations monitor the ozone, fine particulate (PM 2.5), total volatile organic compounds, black carbon, nitrogen oxides, and various meteorological information. This data is streamed live on the web and updated once a minute. It can be accessed via the webpage or by smart phone if near the station. One of the problems with interpreting this data is that all of EPA's exposure information is based on longer term exposure (e.g., eight hour ozone exposure). EPA does not have any information that will convert one-minute readings into health effects although they do give broad guidelines on what these reading mean. In addition to Houston, Village Green stations are now operating in Durham, NC, Washington, DC, Kansas City, KS, Philadelphia, PA, Oklahoma City, OK, Hartford, CT, and Chicago, IL. Additional information can be found at <https://www.epa.gov/air-research/village-green-project>.

## **IT3**

The next IT3 conference will be held on March 6-8, 2018, in Houston, TX. The organizing committee has put out a call for abstracts. The deadline for abstracts is September 4, 2017. Details can be found at <https://www.awma.org/it3>.

## **CRWI meeting**

The next CRWI meeting will be held on August 15-16, 2017, in Indianapolis, IN. It will feature a tour of Covanta's waste-to-energy facility. For additional information, contact CRWI (mel@crwi.org or 703-431-7343).