



CRWI Update June 30, 2019

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.
METCO Environmental, Inc.
Montrose Environmental Group, Inc.
O'Brien & Gere
Spectrum Environmental Solutions LLC
Strata-G, LLC
SYA/Trinity Consultants
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

44121 Harry Byrd Highway, Suite 225
Ashburn, VA 20147

Phone: 703-431-7343
E-mail: mel@crwi.org
Web Page: <http://www.crwi.org>

PFAS issues

In April, the Vermont Governor signed a state law that set drinking water limits of 20 ppt for five per- and polyfluoroalkyl substances (PFAS) compounds. These compounds are perfluorooctanoic acid (PFOA), perfluorooctane sulfonic acid (PFOS), perfluorohexane sulfonic acid (PFHxS), perfluorononanoic acid (PFNA), and perfluoroheptanoic acid (PFHpA). In May, the Environmental Working Group listed 610 sites that are contaminated with PFAS compounds and developed an interactive map to show the locations (<https://www.ewg.org/research/update-mapping-expanding-pfas-crisis>). In June, they added 475 industrial locations they say may be releasing PFAS compounds.

On June 27, 2019, the Senate passed Department of Defense funding legislation that contained a number of provisions related to the control of PFAS compounds. Some of the provisions included would require EPA to:

- Set primary drinking water standards for PFOA and PFOS within two years;
- Add PFOA, PFOS and other PFASs as active chemical substances to the Section 8(b)(1) TSCA list (would require reported under TRI);
- Issue a TSCA Section 8(a) data call for PFAS production since 2006;
- Issue guidance on methods to dispose and destroy PFAS compounds (including aqueous firefighting foam);
- Develop monitoring and detection measures for PFAS;
- Develop a nationwide sampling program for PFAS; and
- Further examine the effects of PFAS compounds on human health and the environment.

The Senate passed legislation does not require EPA to add PFAS to the list of hazardous substances under CERCLA. The House is also working on PFAS amendments for their version of the Department of Defense appropriations bill. Some of their PFAS provisions are the same or similar to the ones in the Senate bill. However, others are more restrictive, including a

provision that gives EPA one year to add PFOA and PFOS as hazardous substances under CERCLA.

North Carolina SSM SIP proposed rule

EPA's 2015 startup, shutdown, and malfunction (SSM) policy was based on the D.C. Circuit 2008 Sierra Club ruling where the court found that an SSM exemption from Clean Air Act Section 112 standards was unlawful since the Act requires "continuous compliance." Based on this ruling, EPA under the Obama Administration issued a State Implementation Plan (SIP) call for every state plan that included exemptions based on SSM. On June 5, 2019, Region 4 proposed to approve a portion of North Carolina's SIP regarding NOx emissions from large internal combustion engines. As a part of this, Region 4 is considering an alternate SSM policy. In this action, EPA is proposing an SSM exclusion for one source category (large internal combustion engines) for one pollutant (NOx). This provision would exempt periods of startup, shutdown, and malfunction not to exceed 36 consecutive hours and to exempt scheduled maintenance periods. This exemption is at the discretion of the state director. Region 4 is justifying this proposed change because these regulations are under Section 110 of the Clean Air Act. The majority of the proposal is a discussion of why the 2008 Sierra Club decision does not apply to Section 110. If, after receiving and evaluating comments, the Region decides to use this alternative policy, they will withdraw the 2017 SIP call for North Carolina and finalize a revised SIP allowing limited SSM use for National Ambient Air Quality Standards under Section 110.

The SSM provisions in North Carolina's state regulations are similar to what has been used in the past. They allow the Director to use seven criteria when evaluating whether a specific event is a malfunction. These criteria are:

- (1) The air cleaning device, process equipment, or process has been maintained and operated, to the maximum extent practicable, in a manner consistent with good practice for minimizing emissions;
- (2) Repairs have been made in an expeditious manner when the emission limits have been exceeded;
- (3) The amount and duration of the excess emissions, including any bypass have been minimized to the maximum extent practicable;
- (4) All practical steps have been taken to minimize the impact of the excess emissions on ambient air quality;
- (5) The excess emissions are not part of a recurring pattern indicative of inadequate design, operation, or maintenance;
- (6) The requirements of Paragraph (f) of the Regulation have been met; and
- (7) If the source is required to have a malfunction abatement plan, it has followed that plan.

The Director cannot excuse excess emissions caused by malfunctions from a source for more than 15 percent of the operating time during each calendar year.

This action does not propose to change the 2015 national SSM policy, only to allow an alternative policy to be used in Region 4 for certain NAAQS standards. This and the Region 6 proposed rule to allow an affirmative defense for certain Texas State enforcement actions (see the April 2019 Update) is setting up final actions in the Regions, not headquarters. As such, the impending litigation will be in the 4th Circuit and the 5th Circuit, not the District of Columbia Circuit.

The comment period closes on August 5, 2019.

RTR proposed rules

On June 4, 2019, EPA published proposed risk and technology review (RTR) amendments for the surface coating of metal cans and surface coating of metal coils source categories. The Agency did not modify the standards due to either risk or technology. However, they are proposing to remove startup, shutdown, and malfunction provisions and to require electronic reporting of performance test results. Comments will be accepted until July 19, 2019.

Once in, always in proposed rule

On June 25, 2019, EPA Administrator Wheeler signed a proposed rule to implement EPA's revised reading of the Clean Air Act as outlined in the agency's January 2018 guidance memorandum (*Reclassification of Major Sources as Area Sources Under Section 112 of the Clean Air Act*). This guidance withdrew the 1995 "once in, always in" policy that required any facility that was a major source when the standards became applicable to remain a major source regardless of changes made in the facility to reduce their emissions below the 10 and 25 ton thresholds. The proposed rule would allow sources that reduce HAP emissions below the major source threshold the flexibility to reclassify as an area source. Reclassified sources may be exempted from the requirement to obtain a Title V permit and may be subject to area source requirements rather than MACT requirements. EPA anticipates that three types of facilities will use the option. These are:

- Sources previously classified as major that are no longer physically or operationally capable of emitting HAPs above the threshold;
- Sources that have enforceable potential-to-emit limits below the major source HAP threshold; and
- Sources with actual emissions above the major source threshold that reduce their emissions below the threshold and put in place enforceable limits to ensure those emissions remain below the threshold.

The Agency is also proposing criteria for establishing potential-to-emit limits that are legally and practically enforceable. The proposal states that there are 7,920 sources currently subject to major source standards. If finalized as proposed, the Agency estimates that approximately half could become area sources. This could save \$169 million in the first year and \$169 to \$183 million annually with no increase in emissions.

The proposed rule also notes that 34 sources have already taken advantage of the January 2018 change in policy. Once published in the *Federal Register*, the comment period will be open for 60 days. Meanwhile, a pre-publication copy can be found at <https://www.epa.gov/stationary-sources-air-pollution/reclassification-major-sources-area-sources-under-section-112-clean>.

Executive order to disband FACs

On June 14, 2019, President Trump issued an executive order (E.O. 13875) requiring all federal agencies to eliminate one third of their federal advisory committees (FAC) by September 30, 2019. This does not include FACs required by statute. Thus, the executive order applies only to FACs created under agency authority. For EPA, this will include the Clean Air Act Advisory Committee, the National Environmental Justice Advisory Council, the Children's Health Protection Advisory Committee, the Environmental Finance Advisory Board, and the Board of Scientific Counselors. Each agency can request a waiver of this requirement if they conclude that the committee is "necessary for the delivery of essential services, for effective program delivery, or because it is otherwise warranted by public interest." The order also sets an upper limit of 350 FACs across all federal agencies. Once this limit is reached, no new FACs can be formed. The Office of Management and Budget (OMB) will provide instructions on how to implement this order and submit a recommended list of FACs to be closed to the President on September 1, 2019. Merit review panels are excluded from this order.

Enforcement

On June 7, 2019, EPA's Office of Enforcement and Compliance Assurance released their National Program Guidance for FY 2020-2021. EPA will be focusing on the following six issues:

- Reducing excess emissions of harmful pollutants from stationary sources;
- Reducing hazardous emissions from hazardous waste facilities;
- Stopping aftermarket defeat devices for vehicles and engines;
- Reducing "significant noncompliance" with national pollution discharge elimination system (NPDES) permits;
- Reducing noncompliance with drinking water standards at community water systems; and
- Reducing risks of accidental releases at industrial and chemical facilities.

A copy of the complete guidance can be found at <https://www.epa.gov/planandbudget/final-fy-2020-2021-office-enforcement-and-compliance-assurance-oeca-national-program>.

The Wall Street Journal published an article (June 24, 2019) on EPA and OSHA enforcement activities. They reported that EPA conducted 10,600 inspections during the last fiscal year. That is approximately 60% lower than the annual average since 2001. The highest number of inspections (21,300) were during the Obama

Administration. They specifically pointed to Region 5 where there were 378 inspections in the last fiscal year as compared to 1,209 in 2017 and 2,157 in 2016.

EPA funding

On June 25, 2019, The House passed H.R. 3055, a FY 2020 funding bill for EPA, the Departments of Interior, Commerce, Transportation, and Agriculture. This bill allocates \$9.5 billion for EPA which is \$3.3 billion more than the Administration requested. The bill also includes provisions that would prevent EPA from reducing power sector mercury controls, block repeal of greenhouse gas regulations for new power plants, and prohibiting the closing of certain regional offices. Democrats rejected several amendments offered by Republicans that would bar enforcement of certain Obama Administration EPA regulations. This bill now goes to the Senate. It is unclear how many of these provisions and what funding levels will survive in the Republican controlled Senate.

EPA personnel

On June 26, 2019, Bill Wehrum, Assistant Administrator for the Office of Air and Radiation, announced he would resign his position as of June 30, 2019. The EPA Administrator named Principal Deputy Assistant Administrator Anne Idsal to assume the responsibilities of Acting Assistant Administrator. Previously, Ms. Idsal was the Regional Administrator for Region 6. The trade press is reporting that Peter Wright's nomination for Assistant Administrator for the Office of Resource Conservation and Recovery is scheduled for a vote in early July.

CRWI meeting

The next CRWI meeting will be on August 21-22, 2019, in Port Huron, MI. It will feature a tour of Clean Harbor's Sarnia hazardous waste combustion units. For additional information, contact CRWI (mel@crwi.org or 703-431-7343).