



## CRWI Update June 30, 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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### Ignitable liquids determination final rule

On June 8, 2020, the EPA Administrator signed the ignitable liquids determination final rule. The final rule has five major actions.

- It allows generators or laboratories to use any ASTM standard listed in Methods 1010B and 1020C to determine ignitability;
- Facilities may now use non-mercury thermometers when using Methods 0010, 0011, 0020, 0023A, and 0051;
- Updates the cross reference to Department of Transportation regulations;
- Revises the alcohol exclusion by adding the phrase “at least 50 percent water by weight;” and
- Clarifies the existing guidance on sampling of multiple-phase wastes.

The rule is scheduled for publication on July 7, 2020. It will become effective on September 8, 2020.

### 1-BP as a HAP

The Halogen Solvents Industry Alliance (2010) and the State of New York (2011) submitted petitions asking EPA to add 1-bromopropane (1-BP – also known as n propyl bromide) to the list of hazardous air pollutants (HAP). In 2017, EPA published a draft document stating they intended to list the compound and asked for comments. They received 12 comments. From the petitions and comments received, the Agency concluded there was sufficient evidence demonstrating adverse health effects and 1-BP should be listed as a HAP. On June 18, 2020, EPA published a notice granting those petitions. This notice does not add the compound to the list of HAPs or set emission standards for any source category that emits 1-BP. It simply starts the process for adding the compound to the list of HAPs. This is the first time EPA has added a compound to the list of HAPs.

The next step will be for EPA to formally announce the addition of the compound to the list. They will then ask for emissions data and propose to set MACT standards for the source categories that emit this pollutant. According to the June 18, 2020, notice, the largest

emitter for 1-BP is the halogen solvent cleaning source category (Part 63, subpart T). This source category currently has standards for methylene chloride, perchloroethylene (PERC), and trichloroethylene. The other source category mentioned is the PERC dry cleaning source category. At this time, the Agency does not believe that any other source category will be impacted. EPA did not give an estimated timetable for these rulemakings.

### **RTR rules**

EPA completed a number of risk and technology review (RTR) rules in June. While all were signed in time to meet the court deadline, some have been slow in making it into the *Federal Register*. Most are following the pattern of removing startup, shutdown, and malfunction provisions and adding electronic reporting with at least one exception. For the iron and steel foundries source category, EPA is allowing work practices for the volatile organics HAP (VOHAP) standards during startup and shutdown. Under normal operations, these facilities have a 20 ppm emission limit for VOHAPs. The final rule includes definitions of cupola startup and shutdown and the work practices that apply during these periods. These work practices include building opacity limits, requiring the operation of the cupola afterburner or other thermal devices as soon as practicable but no later than 30 minutes after blast air is started and to keep these devices operational at all times during “off blast periods.” The facility will also have a general duty to minimize emissions during these periods by following procedures specified in their operation and maintenance plan. The rule also adds monitoring and recordkeeping requirements to demonstrate compliance with these work practices.

### **SSM**

On June 22, 2020, EPA proposed to approve an Iowa state implementation plan (SIP) for sulfur dioxide national ambient air quality standards for the Muscatine non-attainment area. This SIP allows for exemptions during startup, shutdown, and malfunctions (SSM). The proposed rule was issued by Region 7 and states that it is not a revision of the national policy but is justified based on local circumstances. Previously the Agency allowed the use of affirmative defenses in a Texas SIP and SSM exclusions in a North Carolina SIP. The Texas action is currently in litigation and the parties are arguing over whether the suit should be heard in the 5<sup>th</sup> Circuit or the District of Columbia Circuit. On June 29, 2020, environmental groups challenged the North Carolina SIP final rule. The comment period for the proposed Iowa action closes on July 22, 2020.

### **Boiler MACT proposed rule**

The Office of Management and Budget released the next boiler MACT proposed rule on June 3, 2020. The proposed rule is expected to address the remands required by two separate court actions. These issues include revising emission standards for certain subcategories, the use of carbon monoxide as a surrogate for non-dioxin organic hazardous air pollutants, and the use of a 130 ppm threshold for carbon monoxide

emissions. As of the end of June, the proposed rule has not been signed by the Administrator.

### **Spring 2020 regulatory agenda**

EPA released their Spring 2020 regulatory agenda on June 29, 2020. This document lists the activities the Agency intends to work on for the next 12 months and gives approximate timetables for each action. For a number of years, the largest number of rulemakings have been from the Office of Air and Radiation (OAR). The OAR list includes seven activities in pre-rule stage, 43 rules in proposed rule stage, and 30 rules in final rule stage. In contrast, the Office of Land and Emergency Management has one rule in pre-rule stage, six rules in proposed rule stage, and six rules in final rule stage. A complete listing can be found at <https://www.reginfo.gov/public/do/eAgendaMain>.

### **RTR deadline suit**

Environmental groups filed suit (*Citizens for Pennsylvania's Future, et al., v. Wheeler*) in the U.S. District Court for the Northern District of California alleging that EPA had failed in its statutory duty to periodically review MACT rules for the two coke oven source categories. EPA promulgated these MACT standards in 1993 and the initial risk and technology review rules in 2005. Under the Clean Air Act, the Agency is required to complete a technology review every eight years. While the statute is clear that an initial risk review is required, it is ambiguous on whether additional risk reviews are required. In the past, EPA has interpreted the statute to require one risk review eight years after the MACT standards are promulgated and technology reviews every eight years after the MACT standards are promulgated. During the litigation, EPA conceded that they had failed to complete the second technology review as required but argued that the statute does not require a second risk review. The plaintiffs argued that EPA was required to complete both technology and risk reviews every eight years. On June 26, 2020, the district judge set a 30 month deadline for the Agency to complete the second technology reviews for each of these source categories but agreed with EPA that additional risk reviews are not required.

### **EPA COVID enforcement policy**

EPA has received considerable attention on their modifications to the enforcement policy based on the COVID pandemic. Environmental groups have alleged the policy allows companies to stop monitoring without informing the public. They have filed emergency rulemaking petitions to require any facility taking advantage of policy to publicly disclose what modifications have been made. They have filed lawsuits to force EPA to discontinue the policy. Industry has made more than 300 requests for compliance flexibility and some companies have suspended fine payments. EPA defended the policy stating that it did not allow anyone to exceed emission standards, only gave flexibility in reporting requirements. On June 30, 2020, EPA Assistant Administrator Susan Bodine announced that the policy would be suspended on August

31, 2020. This date was selected to give regions, states, and local permitting authorities time to return to normal reporting processes.

### **EPA enforcement**

Periodically, EPA's Office of Enforcement and Compliance Assurance releases compliance advisories and enforcement alerts. The latest was released in June and focused on RCRA air emissions. One of EPA's National Compliance Initiatives is to reduce air emissions from hazardous waste facilities. The Alert states that EPA completed 325 RCRA subparts AA, BB, and CC inspections at TSDFs and large quantity generators during FY 2017-2019. These inspections found "hundreds of ongoing emission leaks that were identified and immediately repaired..." The report includes case studies for Decostar Industries, Inc, and Tradebe Treatments and Recycling Northeast, LLC. The consent decrees for both of these actions were finalized in 2018. The report specifically mentions improperly functioning pressure relief devices, improperly secured tank openings, and the use of Forward Looking Infrared (FLIR) cameras to detect leaks. A copy can be found at <https://www.epa.gov/enforcement/compliance-advisories-and-enforcement-alerts>.

### **EPA personnel**

Doug Benevento's nomination to be the next EPA Deputy Administrator has hit a significant hurdle over how the Agency is currently handling renewable fuel standard waivers to biofuel mandates. EPA currently has 52 requests from small refiners to waive past and future mandates. If granted, the waivers would allow these refiners to exclude ethanol from their gasoline mixtures. The requirement to include certain percentages of ethanol in gasoline has been an ongoing fight between farmers and oil companies for many years. On June 26, 2020, Senator Joni Ernst (R-IA) announced she would not support Mr. Benevento's nomination. This effectively stops the process. This action has nothing to do with Mr. Benevento's qualifications for the job. It is because Ms. Ernst is in a close election this fall with an opponent who accused her of siding with "big oil" instead of "Iowa farmers." The Chair of the Environment and Public Works Committee has confirmed that the nomination will not come to a vote in Committee until Ms. Ernst signals support.

### **EPA office re-openings**

While most EPA staff have been teleworking since March, limited EPA staff have continued coming into the office. In early June, EPA started the process of reopening offices for everyone beginning with Regions 3 and 5, the Cincinnati offices and the Washington D.C area offices. They expanded this to Regions 1, 2, 4, 7, 8, and 10. They are following the protocol issued by the Office of Personnel Management. The first step in this process was to completely close these offices for seven days starting on Monday, June 15, 2020, to follow CDC cleaning guidance. Once the seven days has past, that office would enter into Phase 1 re-opening. Under Phase 1, telework would continue to be encouraged but certain personnel would start returning to the office.

Once additional criteria have been met, more personnel would be encouraged to return. However, telework will still be allowed for vulnerable populations. The union representing EPA personnel has pushed back on this plan arguing that it is not safe to return. The resurgence of cases in the South and West have put most of the re-opening plans on hold. Restarting the process will depend upon the rate of new cases in the region and will likely be decided on a case-by-case basis.

### **Economic recovery executive order**

On June 4, 2020, President Trump signed an executive order designed to accelerate the economic recovery from the COVID pandemic by expediting infrastructure investments. While the majority of the order is directed at the Department of Transportation, the Army Corp of Engineers, and the Department of the Interior, there is a catchall section at the end that requires the heads of all agencies to review all statutes, regulations, or guidance to identify activities that are impeding economic recovery. This is a very broad brush and it is yet to be determined how this executive order will be used in the next couple of months on what is perceived as environmental regulations slowing economic recovery.

### **PFAS issues**

There continues to be numerous trade press articles on PFAS issues. Some are concrete actions while others are promises of future activities. An example of a concrete action is the June 22, 2020, publication of a final rule that requires reporting of releases of 172 PFAS compounds under Toxics Release Inventory. The promises of future action are mostly around the language to be included in the FY 2021 National Defense Authorization Act. Here, various Congressmen and Senators are trying to extend the PFAS requirement included in the FY 2020 authorization bill. Since this is a "must pass" legislation, there will be considerable efforts to add PFAS requirements. If this follows past performances, the House will add numerous requirements, the Senate will take most or all of them out, and then they will compromise. It is early in the process and this legislation is not expected to be completed until after the November elections.

EPA continues to fund research on treating PFAS contaminated media. They announced small business grants to further develop and commercialize two projects in Texas. One uses polymer nanofiber mats for removal of PFAS compounds from contaminated water. The second uses metal organic catalysts coupled with ultraviolet light to destroy PFAS compounds in water.

The New York Legislature passed S7880B on June 9, 2020. This legislation would ban the incineration of aqueous film forming foam (AFFF) in any New York city that has a population between 16,000 to 17,000. It just so happens that Cohoes, NY has a population of 16,655 (2018) and is the home of the Tradebe lightweight aggregate kiln that has been burning Department of Defense AFFF. Governor Cuomo is expected to sign the bill into law.

### **TCEQ CPT report format**

Field and analytical data for all comprehensive performance tests (CPT) must now be submitted to the Texas Commission on Environmental Quality (TCEQ) using standard reporting forms. These can be found on the website ([https://www.tceq.texas.gov/permitting/waste\\_permits/ihw\\_permits/ihw.html#HWC](https://www.tceq.texas.gov/permitting/waste_permits/ihw_permits/ihw.html#HWC)).