



## CRWI Update June 30, 2021

### MEMBER COMPANIES

Clean Harbors Environmental Services  
Eastman Chemical Company  
Heritage Thermal Services  
INV Nylon Chemicals Americas, LLC  
3M  
Ross Incineration Services, Inc.  
The Dow Chemical Company  
Veolia ES Technical Solutions, 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  
Eurofins TestAmerica  
Focus Environmental, Inc.  
Franklin Engineering Group, Inc.  
Montrose Environmental Group, Inc.  
Ramboll  
Spectrum Environmental Solutions LLC  
Strata-G, LLC  
SYA/Trinity Consultants  
TEConsulting, LLC  
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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## Spring 2021 Regulatory Agenda

Every six months, federal agencies release a list of rules they intend to work on in the short-term (12 months) and the long-term (1-3 years). These lists can be found at <https://www.reginfo.gov/public/do/eAgendaMain>. The Spring 2021 version was released on June 10. While the timetables in the list are often ambitious, it gives stakeholders an idea of which rules EPA is working on and when they will attempt to complete those rules. This agenda is of particular significance because it gives the first clear picture of what the Biden Administration plans to work on, particularly which Trump Administration rules are to be modified. Some of the rules of interest to Update readers are as follows.

- Rescind the February 6, 2020 rule on on-site civil inspections. The current agenda has this action to be completed in June 2021. That did not happen but could occur in July or August.
- Withdraw the November 19, 2020, major source reclassification rule. EPA plans a notice of proposed rulemaking in December 2021 with a final rule in December 2022.
- Revise the 2019 amendments to the risk management plan provisions under the Clean Air Act. EPA plans a notice of proposed rulemaking in September 2022 with a final rule in August 2023.
- Develop per- and polyfluoroalkyl substance maximum contaminant levels under the Safe Drinking Water Act. EPA plans a proposed rule in March 2023 with a final rule in September 2024.

In 2020, EPA published a site remediation residual risk and technology review final rule. Sierra Club filed a petition for review and a petition for reconsideration. EPA asked for and received permission from the court to hold the case in abeyance while considering the petition for reconsideration. On June 30, 2021, EPA filed a motion with the court stating that the Agency “intends to convene an administrative process that may obviate the need for judicial resolution of some or all of the disputed issues...” They asked the court to continue to hold this case in abeyance while the Agency goes through the reconsideration process.

## **EAB rule rescinded**

In July 2020, EPA published a rule to streamline the Environmental Appeals Board (EAB) review of permits. That rule set a 60-day deadline for the Board to release an opinion once the appeal has been fully briefed, limited filing extensions to one request per party for a maximum extension of 30 days, altered the deadline and page limits for amici briefs, and limited the terms for EAB judges to 12 years. On June 11, 2021, the Agency published a rule rescinding most of the 2020 rule. EPA states that the current rule restores the permit appeals process to what existed prior to 2020 and restores the EPA Administrator's delegation of authority to the EAB. The 2021 rule:

- Removes the 60-day deadline to release an opinion;
- Restores the previous deadlines and word limits for amici briefs;
- Eliminated the one filing extension restriction; and
- Removes the term limits for EAB judges.

## **1-BP as a HAP**

In 2017, EPA published a draft document stating they intended to list 1-bromopropane (1-BP) as a hazardous air pollutant (HAP) and asked for comments. On June 18, 2020, EPA announced they were granting the petition. This is the first time EPA has added a HAP to the list and there is some uncertainty on how to proceed. On June 11, 2021, EPA published an advanced notice of proposed rulemaking asking for information on how to proceed with the listing process and the potential ramifications of that listing. These include how many source categories will be impacted, whether these are area sources or major sources, will the addition impact the area source/major source determination, how will this impact existing and new permits, etc. The comment period ends on July 26, 2021.

## **TSCA chemical risk evaluations**

The Toxic Substances Control Act (TSCA) requires EPA to review the risks associated with chemicals already on the market and take action to manage any unreasonable risks found. Under the Trump Administration, the risk evaluations for the first 10 chemicals did not assess air, water, or disposal exposures to the general population because these exposure pathways were already regulated. The current administration believes that excluding these exposure pathways may fail to address potential exposures to susceptible subpopulations, especially fence line communities. On June 30, 2021, EPA announced a change in the policy of how the Agency reviews these chemicals. EPA now plans to reassess seven of the 10 chemicals (methylene chloride, trichloroethylene, carbon tetrachloride, perchloroethylene, n-methylpyrrolidone, 1-bromopropane, and 1,4-dioxane). To accomplish this, EPA will develop a screening-level approach to conduct ambient air and surface water assessments using existing data to determine if there is the potential for unreasonable risk to fence line

communities. They will also review the assumptions on the use of personal protective equipment by workers. Should these re-evaluations show unreasonable risk, additional actions will be taken to manage those risks.

## **PFAS**

The 2020 National Defense Authorization Act (NDAA) required EPA to add per- and polyfluoroalkyl substances (PFAS) to the list of chemicals reported under the Toxic Release Inventory (TRI) if the Agency developed toxicity values for a substance, published a significant new use rule for a substance, or added an active chemical substance. On June 3, 2021, EPA added three PFAS compounds to the list of compounds reported under TRI. The three compounds are perfluorooctyl iodide, potassium perfluorooctanoate, and silver(I)perfluorooctanoate. These three compounds are now reportable for the 2021 reporting year (due July 1, 2022). In addition, the 2020 NDAA amended the Toxic Substances Control Act (TSCA) section 8(a) by adding a paragraph (7) that requires EPA to promulgate a rule requiring every person that manufactured a PFAS compound since January 1, 2011 to report that information. On June 28, 2021, EPA proposed a rule to fulfill that obligation. The comment period closes on August 27, 2021.

The State of New Mexico has submitted a petition (June 23, 2021) asking EPA to designate PFAS as hazardous wastes under RCRA. The contents of this petition are similar to the other two petitions to regulate PFAS substances as hazardous waste. However, RCRA statutory language requires EPA to respond to petitions from a Governor within 90 days. This puts a fairly hard deadline on the Agency to respond. While it is not likely that the Agency will actually declare PFAS compounds as hazardous waste within that 90 days, they must make a decision on how to either grant the petition or deny it. If granted, the Agency would move forward with the process of adding PFAS compounds to the listed (or characteristic) hazardous wastes. This could solve one of the Agency's problems in that all hazardous wastes under RCRA are automatically considered as hazardous substances under CERCLA. However, it creates a host of other problems such as treatment standards, whether to regulate individual PFAS compounds, as classes, or as a whole, etc.

The PFAS Action Act of 2021 (H.R. 2467) would require EPA to designate PFAS compounds as hazardous substances under CERCLA, set national drinking water standards under the Safe Drinking Water Act, add requirements for incineration of PFAS containing wastes, require that EPA include PFAS compounds in the list of hazardous air pollutants, and revise the list of source categories under the Clean Air Act. It was favorably reported out of the House Energy and Commerce Committee on June 23, 2021. The Republicans tried to make a number of modifications to the original language but were unsuccessful. This bill now heads to the Floor. The Republicans may make further attempts to amend the current language during Floor debate but it is

not likely they will be successful. Since the Senate is currently controlled by the Democrats, this bill will probably be taken up and debated by the Environment and Public Works Committee. It can make it out of this committee. Getting the 60 votes it needs in the Senate to actually pass may depend upon what modification are made in the current language.

The current House of Representatives infrastructure bill contains a provision that would give EPA two years to develop drinking water standards under the Safe Drinking Water Act for perfluorooctanoic acid (PFOA), perfluorooctane sulfonate (PFOS), 1,4-dioxane, and microcystin toxin. This bill is expected to pass the House in early July mostly along party lines.

On June 30, 2021, EPA published a notice asking for nominations to a scientific panel to review documents analyzing health effects data used to derive its drinking water goals. These goals are the first step in the process of developing maximum contaminant levels for PFOA and PFOS. Nominations will be accepted until July 21, 2021.

### **Environmental justice**

EPA senior management is pushing to elevate their Office of Environmental Justice from its current position within the Office of Policy to a stand-alone office with a Senate confirmable assistant administrator. This request was included in EPA's FY 2022 budget and includes an additional \$142 million and 171 FTEs to create the new office.

EPA and other federal agencies are trying to figure out how to implement President Biden's Justice 40 initiative. This initiative would require that 40% of certain federal benefits go to disadvantaged communities. The initiative also intends to limit the development of polluting infrastructure. Some external groups have argued that the 40% should be the floor and not a ceiling. The guidance for this program is expected in late July.

The Center for American Progress released a report (June 28, 2021) urging the acceleration of distribution of funds to disadvantaged communities and removing the barriers to funding project in these communities. The report suggests the projects should reduce pollution and carbon emissions; minimize floods, heat and other extreme weather risks; and avoid displacing community members.

On June 21, 2021, EPA Acting Assistant Administrator of the Office of Enforcement and Compliance Assurance released a memo to senior staff outlining how the Office could further the environmental justice program within enforcement. The memo discusses:

- Strengthening detection of environmental crimes in overburdened communities;

- Improved outreach to crime victims; and
- Enhancing remedies sought.

A copy of the memo can be obtained from CRWI.

On June 29, 2021, the U.S. Attorney's office for the Eastern District of New York announced the creation of a special team that would focus on communities that are disproportionately impacted by environmental and health hazards. The team will focus on child lead exposure and clean water and air in New York City and Long Island. The office will be staffed with seven attorneys.

Environmental justice advocacy groups have expressed concern that the current activities are not including anything new. While there is significant new money allocated for environmental justice activities, they claim it is going into existing programs and there are no new initiatives to improve living conditions in poor and minority communities.

## **SEPs**

The Trump Administration developed a number of policy memos restricting the use of supplemental environmental projects (SEP) as a part of enforcement. This was culminated in a December 2020 regulation that enshrined these ideas into Department of Justice (DOJ) regulations. Once the Biden Administration took office, the majority of the policy memos on SEPs were withdrawn but the DOJ regulations have remained in place. This has created a level of uncertainty within DOJ, the regulated community, and environmental groups on if and how SEPs can be used in future enforcement actions. On June 14, 2021, DOJ received a petition from a coalition of environmental groups asking the Department to rescind the 2020 regulations on the use of SEPs. DOJ has not yet responded to the petition.

## **EPA personnel**

June has been a busy month for EPA Assistant Administrator nominations. Michal Freedhoff was confirmed to be the Assistant Administrator for the Office of Chemical Safety and Pollution Prevention on June 14. Radhika Fox was confirmed to be the Assistant Administrator for the Office of Water on June 16. Hearings were held on June 16 for Jane Nishida (Office of International Affairs) and Jeffery Prieto (General Counsel). Three additional nominations were sent to the Senate. On June 15, Amanda Howe was nominated to be the next Assistant Administrator for the Office of Mission Support. Ms. Howe previously worked for the Kamala Harris' presidential campaign, President Biden's second election campaign, and two Virginia Senators. On June 22, Carlton Waterhouse was nominated to be the next Assistant Administrator for the Office of Land and Emergency Management (OLEM). Mr. Waterhouse is currently the Deputy Assistant Administrator for OLEM. Before that he was a law professor at Howard

University. On June 23, David Uhlmann was nominated to be the next Assistant Administrator for the Office of Enforcement and Compliance Assurance. Mr. Uhlmann currently runs a law and policy program at the University of Michigan Law School and was a federal prosecutor for 17 years.

### **FY 2022 EPA budget**

On June 28, 2022, the House Appropriations Committee released a draft fiscal year (FY) 2022 spending bill for EPA. In its current form, it would fund EPA at \$11.34 billion for FY 2022. This is a \$2.1 billion increase from FY 2021. The House version would direct \$248 million in new funds for environmental justice issues and \$61.8 million for scientific and regulatory work on per- and polyfluoroalkyl substances. While this draft has a long way to go before passage, it shows the House's intention of increasing EPA's funding.

### **Methane CRA**

The Congressional Review Act (CRA) allows Congress to pass a joint resolution of disapproval for any federal regulation. If passed and signed by the President, that regulation is removed. On June 30, 2021, President Biden signed S. J. Res. 14, a bill disapproving of EPA's September 14, 2020, methane rule for oil and gas operations. EPA is interpreting this action to mean that the 2020 methane rule never took effect and the 2012 and 2016 NSPS requirements that the 2020 rule repealed come back into effect immediately. This will create an interesting set of problems for both the regulated industry and the regulators on how to implement this change. EPA has developed a series of questions and answers to address some of these issues (<https://www.epa.gov/controlling-air-pollution-oil-and-natural-gas-industry/congressional-review-act-resolution>).

### **Enforcement**

On June 2, 2021, the Department of Justice published a proposed consent decree with the City of Harford, CT on alleged violations of the requirements for new sewage sludge incinerators. The alleged violations include failure to submit control and monitoring plans, conduct annual performance tests, and achieve continuous compliance with operating parameters. The consent decree would require the facility to come into compliance and includes a \$298,000 fine. Additional details can be found in the *Federal Register* notice.

On June 10, 2021, The Department of Justice published a proposed consent decree with Lonestar Industries, Inc. (Greencastle, IN) for violations of 40 CFR Part 63 Subparts DD (off-site waste and recovery operations), EEE, and LLL (Portland cement MACT). Violations include opacity exceedances, carbon monoxide exceedances, exceedances of the maximum inlet temperature to the electrostatic precipitator and baghouse, failure to respond to alarm set points, failure to measure combustion chamber temperature, failure to shut off hazardous waste feed when operating

parameter limits were exceeded, failure to investigate the causes of exceedances, and failure to properly operate pressure relief devices. The decree requires Lonestar to pay a civil penalty of \$729,000, implement measure to prevent re-occurrence of the identified past violations, and complete mitigation projects to offset past environmental harm. The comment period closes on July 10, 2021.

### **CRWI meetings**

Our August 18-19, 2021, meeting will be virtual. Please contact CRWI ([mel@crwi.org](mailto:mel@crwi.org) or 703-431-7343) if you have interest in attending.