



CRWI Update June 30, 2023

MEMBER COMPANIES

Bayer CropScience
Clean Harbors Environmental Services
Eastman Chemical Company
Heritage Thermal Services
INV Nylon Chemicals Americas, LLC
Ross Incineration Services, Inc.
The Dow Chemical Company
Veolia ES Technical Solutions, LLC

GENERATOR MEMBERS

Eli Lilly and Company
Formosa Plastics Corporation, USA
3M

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
TEConsulting, LLC
TRC Environmental Corporation
Trinity Consultants
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

43330 Junction Plaza, Suite 164-641
Ashburn, VA 20147

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

HWC MACT RTR deadline suit

In October 2022, several environmental groups filed suit in U.S. District Court for the District of Columbia alleging that EPA had failed in its non-discretionary duty to conduct a risk and technology review (RTR) of the 2005 hazardous waste combustor (HWC) maximum achievable control technology (MACT) rule. EPA agreed that they had missed the deadline and began negotiations with the groups while the litigation proceeds. In their May 31, 2023, filing, the environmental groups ask the court for summary judgement (make a decision without going to trial) and to give the Agency nine months to propose a rule and 18 months to finalize the rule. EPA's counter motion is due on July 14, 2023. They will likely provide an alternative schedule and also ask for summary judgement. Additional motions are due on July 26 and August 18. If the two parties have not reached a compromise by that time, the judge will make the decision. The judge's decision could take anywhere from three weeks to three months or longer. The proposed agreement will be noticed in the *Federal Register* and will likely have a 30-day comment period.

PFAS ANPRM comment period extended

EPA's advanced notice of proposed rulemaking (ANPRM) to gather information on listing additional per- and polyfluoroalkyl substances (PFAS) as hazardous substances under CERCLA was published on April 13, 2023, with comments originally due on June 12, 2023. On June 5, 2023, EPA extended the comment period until August 11, 2023.

Pyrolysis

In 2020, EPA proposed to remove pyrolysis/combustion units from the definition of "municipal waste incineration unit" under the Other Solid Waste Incineration (OSWI) rule. EPA received adverse comments on this proposed action. In 2021, the Agency published an Advanced Notice of Propose Rulemaking asking for information on the details of pyrolysis/combustion units as well as how they were being used. EPA received 170 comments. After processing the comments and holding additional discussions with stakeholders, the Agency published a *Federal Register* notice (June 5, 2023) that

withdrew the proposed removal of pyrolysis/combustion units from the definition. EPA is under a court ordered deadline to finish the OSWI rule by March 1, 2024. In the June 5 notice, the Agency stated they would not have sufficient time before that deadline to complete their analysis but the analysis would continue past that date. With this action, pyrolysis/combustion units will continue to be regulated as “municipal waste incineration units” until the Agency decides whether separate emission limits are warranted. EPA did not give any timetable on when that decision would be made. It should be noted that there is no definition of pyrolysis/combustion unit in this subpart nor does the definition of “institutional waste incineration unit” include pyrolysis/combustion units.

On a related topic, EPA proposed (June 20, 2023) to require companies to seek approval under the significant new use provisions of TSCA for 18 chemicals derived from the pyrolysis of waste plastics. Companies would be required to seek approval for the use of these chemicals if the feedstock contains any amount of “heavy metals (arsenic, cadmium, chromium VI, lead, mercury), dioxins, phthalates, per- and polyfluoroalkyl substances (PFAS), polybrominated diphenyl ethers (PBDEs), alkylphenols, perchlorates, benzophenone, bisphenol A (BPA), organochlorine pesticides (OCPs), ethyl glycol, methyl glycol, or N-methyl-2-pyrrolidone (NMP).” The Agency also proposes a definition of PFAS for this rule as “a chemical substance that contains at least one of these three structures:

- (A) R-(CF₂)-CF(R')R”, where both the CF₂ and CF moieties are saturated carbons;
- (B) R-CF₂OCF₂-R', where R and R' can either be F, O, or saturated carbons; or
- (C) CF₃C(CF₃)R'R” where R' and R” can either be F or saturated carbons.”

Draft cumulative risk assessment guidance

On June 16, EPA announced the availability of a draft cumulative risk assessment guidance. When finalized, this draft will supersede the 1997 guidance and build upon the 2003 framework. The guidance does not describe how to conduct a cumulative risk assessment but instead describes the foundations for a comprehensive risk assessment plan. Specifically, it is designed to allow users to determine when a comprehensive plan is suitable and feasible. The framework for conducting a cumulative risk assessment is expected the middle of 2024. Cumulative risk assessments are likely to play a large role in future environmental justice decisions. A copy of the draft can be found at <https://www.epa.gov/risk/guidelines-cumulative-risk-assessment-planning-and-problem-formulation>. Comments are due on August 15, 2023.

Boiler MACT litigation

Opening briefs for the boiler MACT litigation were filed on June 26, 2023. The environmental groups are challenging EPA's use of the 2013 database to develop the emission limits. They argue that by excluding the data collected between 2013 and the current rulemaking, the floor calculations do not reflect what is currently being achieved by the best performing sources. They point out that all test results since 2013 are electronically reported and that EPA already has that data. Industry is challenging the

HCl emission limits for new solid fuel boilers and the retention of the new vs, existing date based on the 2011 proposed rule. EPA's response brief is due on September 11, 2023.

OECA enforcement memo

In February, EPA Administrator Regan issued a memo on the best practices for the oversight of state enforcement of federal laws. In the memo, he reiterated the three principles used by EPA since 1984: follow the science; follow the law; and be transparent. He then added a fourth principle of advancing justice and equity. This was followed up by a memo in June from the Office of Enforcement and Compliance Assurance (OECA) Acting Assistant Administrator Starfield replacing a 2019 memo on the cooperation between states and the federal government on enforcement. The 2023 memo retains most of the discussions on joint planning and the roles of the two entities in enforcement actions. It still embraces "cooperative federalism" where the states and the federal government are co-regulators but it leaves out any references to deference to the states. This would indicate that deferring to the states for enforcement is no longer a priority for this EPA. Just how this will be manifested in actions is not clear. Copies of both memos can be found at <https://www.epa.gov/compliance/state-oversight-resources-and-guidance-documents>.

Environmental justice

EPA continues to add staff to their newly formed Office of Environmental Justice and External Civil Rights (OEJECR). On June 13, 2023, the Fordham Law School announced that Professor Ainuke Adediran will be assigned to OEJECR for a year as a part of the Intergovernmental Personnel Act. Professor Adediran is expected to analyze existing programs and make policy recommendations on implementing strategic plans.

In their June 15, 2023 meeting, the White House Environmental Justice Advisory Council approved a letter to EPA asking the Agency to adopt national ambient air quality standards (NAAQS) for fine particulate matter and ozone at the lowest levels supported by the Clean Air Act Advisory Committee. They argued that more stringent requirements would benefit environmental justice communities. This request is similar to ones made by a number of environmental groups. However, this letter goes one step further and states that if EPA does not lower these two NAAQS standards, the Agency should set up a two-tiered system where the NAAQS standards are lower for environmental justice communities.

In the May Update, we reported on a challenge by the Louisiana Attorney General to EPA's environmental justice actions in the state. On June 27, 2023, EPA filed an administrative closure to two complaints alleging that the Louisiana Department of Environmental Quality violated the civil rights of citizens in St. John the Baptist Parish and St. James Parish. As a result of this closure, "EPA will not initiate under Title VI or other civil rights laws any further action, enforcement or otherwise, in response to these

Complaints.” Just how this impacts other actions being taken by EPA in these two parishes is yet to be seen.

On June 29, the Supreme Court released a decision that barred race-based preference in college admissions. While the immediate ramifications to colleges and universities are fairly clear, there is language in the decision that may have larger impacts. For instance, the decision included language that the Civil Rights Act of 1964 also does not tolerate race-based decisions. Various agencies have already removed race-based decision criteria. For example, version 2.1 of EJSCREEN removed race as a demographic criterion and replaced it with income, employment, limited education, English proficiency, and life expectancy. EPA can probably achieve most of its environmental justice goals without including race.

EPA released version 2.2 of EJSCREEN. Version 2.1 added U.S. territories and census data through 2020. Version 2.2 adds Toxics Release Inventory data and new indicators. EPA will hold training sessions on July 26 and August 16, 2023. Additional information can be found at <https://www.epa.gov/ejscreen/ejscreen-office-hours-training>.

EPA continues to provide funds to environmental justice communities. On June 5, 2023, Region 6 announced a \$479,958 grant under the Inflation Reduction Act to the Louisiana Department of Environmental Quality to establish and operate a temporary air quality monitoring site in St. James Parish. The press release (<https://www.epa.gov/newsreleases/epa-rep-troy-carter-announce-grant-la-deq-air-monitoring-project-st-james-parish>) did not give any other details. On June 26, 2023, the Office of Water announced grants of over \$50 million to support projects and activities in underserved communities most in need of safe drinking water. A list of the grants can be found in at <https://www.epa.gov/newsreleases/epa-announces-over-50-million-assist-small-underserved-and-disadvantaged-communities>. EPA also announced a \$7 billion grant program to fund residential solar programs in low income and disadvantaged communities. Details can be found at <https://www.epa.gov/newsreleases/biden-harris-administration-launches-7-billion-solar-all-grant-competition-fund>.

PFAS

On June 22, 2023, Senators Carper (D-DE) and Capito (R-WV) released a draft per- and polyfluoroalkyl substances (PFAS) bill. This bill would define PFAS as “a non-polymeric perfluoroalkyl or polyfluoroalkyl substance; and a side chain fluorinated polymer that is a member of a group of human made chemicals that contain at least fully fluorinated carbon atoms.” The term PFAS would also contain degradants which is defined as “a transformation product or byproduct of the perfluoroalkyl or polyfluoroalkyl substance that results in the formation of a different perfluoroalkyl or polyfluoroalkyl substance in the environment; or a thermal conversion byproduct of the perfluoroalkyl or polyfluoroalkyl substance, including a byproduct of incomplete combustion or destruction.” The draft language does not include any exclusions for passive users of PFAS materials. It would require EPA to set drinking water standards for six PFAS

compounds by September 30, 2024. It also sets up a National Academy of Sciences study and would require EPA to develop a risk management guide within two years. Carper and Capito asked for comments on the draft by July 3, 2023. It is not clear whether the authors will try to push this forward as a stand-alone bill or will try to incorporate into the next version of the National Defense Authorization Act.

The House version of the National Defense Authorization Act (H.R. 2670) was reported out of committee on June 30, 2023. In the report (H. Rept. 118-125) that accompanied the legislation, the committee requires the Department of Defense to submit a report to Congress on whether non-incineration technologies can be incorporated into the Department's strategy for disposal of PFAS wastes. The report is to include the results of any testing of these technologies, opportunities for operational scale testing, sites that would be suitable for operational scale testing, and whether a formal pilot program would be useful. The bill also authorizes the Department of Defense to carry out a pilot study using thermal destruction to dispose of PFAS materials and allocates \$1 million to carry out that study. It now goes to the House floor for debate.

On June 23, 2023, EPA published a final rule that adds nine PFAS compounds to the list of chemicals reported under the Toxics Release Inventory requirements. This will trigger the reporting requirements for 2023, to be submitted by July 1, 2024. More details and the list of compounds can be found in the notice.

The trade press continues to report that the Department of Defense's PFAS disposal guidance is expected soon.

EPA received approximately 65,000 comments on the proposed rule to add perfluorooctanoic acid and perfluorooctanesulfonic acid to the list of hazardous substances under CERCLA. As a result of having to work through so many comments, the Agency has moved its expected date for a final rule to February 2024.

IT3

The program for the September 13-14, 2023, IT3 Conference is now available. It can be found at <https://www.awma.org/IT3>.

CRWI meetings

Our next meeting will be on August 16-17, 2023, in Painesville, OH. Please contact CRWI (mel@crwi.org or 703-431-7343) if you have interest in attending.