



CRWI Update  
March 31, 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

#### 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

44121 Harry Byrd Highway, Suite 225  
Ashburn, VA 20147

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

### Boiler litigation

On March 23, 2017, American Municipal Power (AMP) submitted a petition for writ of certiorari to the Supreme Court of the United States asking the court to review the U.S. Court of Appeals for the District of Columbia Circuit's decision on the boiler rule. Specifically, AMP is asking the Supreme Court to overturn the Appeals Court's malfunction decision. The question being put before the court is whether EPA can promulgate a regulation that the Agency knows cannot be met and that outlaws accidental releases. AMP contends that requiring a facility to meet emissions limitations during malfunctions makes the rule impossible to meet. As such, this rule contradicts the requirements in the Clean Air Act. In the process, AMP is also challenging the 2008 decision (*Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008)) where the Appeals Court held that the Clean Air Act requires that standards must be met at all times. In addition, AMP is arguing that EPA improperly regulated malfunctions under section 112(d) of the Clean Air Act instead of under the accidental release provisions of section 112(r). The Supreme Court only takes a small percentage of cases submitted. It may not be known whether the Court will accept this case for several months.

### RTR deadline suits

Environmental groups filed two suits over EPA missing the eight year deadlines for 33 risk and technology review (RTR) rules. In both, the environmental groups asked for the rules to be completed within two years. EPA submitted a schedule that spread promulgation of the rules over a longer period of time. Typically, the two parties work out some sort of mutually agreeable deadline and present a settlement to the court. In both of these cases, the parties could not come to an agreement and the court made the decision. In the first case involving 20 RTR rules, the environmental groups ask that rules for 10 of the 20 be proposed within eight months and finalized within one year and the remaining 10 be proposed within 20 months and finalized within two years. EPA responded with a phased promulgation schedule with the last rule being finalized in four years. On March 13, 2017, a district court judge ruled that EPA

must complete the 20 RTR rules within three years (*California Communities Against Toxics, et al. v. EPA*). The judge did not set a timetable for each rule but a date when all 20 should be completed. In a separate suit involving 13 additional RTR rules, a different judge was presented with similar options from the parties and made a similar decision. The second decision was released on March 23, 2017 (*Blue Ridge Environmental Defense League, et al. v. Scott Pruitt*), also giving EPA three years to complete the 13 additional RTR rules. With these two decisions, EPA now has three years to complete 33 RTR rules. These rules includes: rubber tire manufacturing; lime manufacturing plants; solvent extraction for vegetable oils; municipal solid waste landfills; hydrochloric acid production; site remediation; and miscellaneous organic chemical manufacturing. When asked about this possibility earlier, EPA staff responded that they would meet any court deadlines. They may have to move staff around and reduce the thoroughness of each rulemaking but they would meet the deadlines imposed by the court. Until these two orders were released, EPA was moving forward with these rules on the timetables laid out in the submittals to the court. Now that they have three years to complete all 33 rules, the Agency will likely re-evaluate their options. This coupled with reduced resources may force the Agency to pull staff from other endeavors.

### **RMP rule**

The risk management plan (RMP) final rule was published in the *Federal Register* on January 13, 2017, seven days before President Trump took office. This was one of the rules that was initially impacted by the Priebus memo delaying the effective dates of recently promulgated regulations. On February 28, 2017, a group of industry trade organizations filed a petition for reconsideration of this rule. On March 13, 2017, EPA Administrator Pruitt granted the petition. In a March 16, 2017, *Federal Register* notice, EPA delayed the effective date an additional 90 days (until June 19, 2017), the maximum length of time allowed by Clean Air Act for a reconsideration request. In addition, eleven states petitioned EPA for an additional 15 months delay in the effective date to allow the Agency to make a decision on whether to revise or repeal the existing RMP regulations. On March 29, 2017, EPA Administrator Pruitt signed a proposed rule to extend the effective date of this rule until February 19, 2019. This will allow the Agency to consider the petitions for reconsideration and take further regulatory action on this final rule. A public hearing will be held on April 19, 2017, and comments will be accepted until May 19, 2017. EPA plans to finalize the new effective date before June 19, 2017 (the current effective date).

Meanwhile, there has been no activity on H. J. Res. 59 or S. J. Res 28, resolutions of disapproval for the RMP final rule. These resolutions do not appear to be high on Congress' list of priorities.

### **Further delay of effective dates**

As mentioned in the previous section, the Priebus memo delayed the effective date for 30 Obama Administration final rules. The majority of these rules involved approving

various state plans. On March 20, 2017, EPA published a notice that extended the effective date for five of these rules until May 22, 2017. The notice states that additional time is needed to give the current administration time to conduct a substantive review of these five regulations. The notice cites the length of time taken for confirmation of the EPA Administrator and the lack of confirmed Assistant Administrators as the reasons for the delays in reviewing these five rules. These five rules cover:

- Subsurface component to the hazardous ranking system;
- Formaldehyde emission standards for composite wood products;
- Revisions to guidelines for air quality models;
- Certification of pesticide applicators; and
- Rules of practice governing the assessment of civil penalties.

The other rules were allowed to become effective on March 21, 2017.

This created a reaction from Congressional Democrats. On March 20, 2017, four Congressmen (Frank Pallone, D-NJ, Bobby Rush, D-IL, Paul Tonko, D-NY, and Doris Matsui, D-CA) sent a letter to the Office of Management and Budget saying that actions taken by EPA Administrator Pruitt violate the Administrative Procedures Act because their final actions were published less than 30 days before the affected rules took effect and they did not include a notice and comment period. Mr. Pallone is the ranking member of the House Energy and Commerce Committee. This committee has jurisdiction over EPA. In addition, the Congressmen are asking for copies of all records relating to these actions. This request includes emails and communications between the Administration and several trade organizations.

### **Comment period extended – financial responsibility proposed rule**

On March 2, 2017, EPA extended the comment period for the financial responsibility requirements under CERCLA 108(b) for the hard rock mining industry from March 13, 2017, until July 11, 2017. No mention has been made of following up on the Obama Administration's notice of intent (published January 11, 2017) to proceed with rulemakings setting financial assurance requirements for the chemical manufacturing sector; the petroleum and coal products manufacturing sector; and the electric power generation, transmission, and distribution industry.

### **TCEQ hazardous waste combustion tools**

On March 23, 2017, the Texas Commission of Environmental Quality (TCEQ) announced a series of tools and resources available on their web site ([https://www.tceq.texas.gov/permitting/waste\\_permits/ihw\\_permits/ihw.html](https://www.tceq.texas.gov/permitting/waste_permits/ihw_permits/ihw.html)). TCEQ added the following tools:

- Cover sheet for the submittal of comprehensive performance test (CPT) plans;
- Checklist for submittal of CPT plans;
- QA/QC checklist required for notice of compliance reports; and

- Links to rule test, requirements, and a flow chart for EEE requirements.

TCEQ intends to add additional tools and resources to their website in the near future.

### **EPA budget**

On March 16, 2017, the Trump Administration released its budget outline for EPA and other federal agencies. This release only gives the total dollars and the full-time equivalent employees (FTE) for the agencies. The outline would reduce EPA's total budget from the current \$8.1 billion to \$5.7 billion, a \$2.4 billion cut. The outline would scrap the Clean Power Plan, the Energy Star efficiency labeling program, the endocrine screening program, the Great Lakes and Chesapeake Bay restoration programs, multiple grants programs, and any activity that is duplicative of state programs. It does not eliminate the Office of Enforcement and Compliance Assurance but reduces their budget from the current \$419 million to \$290 million, a 31% cut. The Office of Research and Development would be cut by almost 50% (\$233 million), the hazardous substances Superfund account would be cut by 30% (\$330 million), state grants would be cut by 45% (\$482 million), but the clean water and drinking water state revolving funds would be increased by \$4 million. In addition, this budget would reduce the FTEs at EPA by 3,200. The current level is 15,376. A more in-depth proposal will follow in the next several weeks.

One should be reminded that the Executive Office only recommends the budget. Congress has the final say in how much money is appropriated to each agency. There will be considerable lobbying efforts to keep certain programs. For example, the States that receive money for the Great Lakes and Chesapeake Bay restoration program will push to have those funds restored. Environmental groups will push to restore funding and FTEs. But with Republicans in control of both Houses of Congress, it is likely that EPA will see substantial reductions in fiscal year 2018. Some of this may depend upon Congress' ability to get appropriations done before fiscal year 2017 ends (September). They have not been able to do this in the last several years.

In fact, Congress is still working on finishing the appropriations for FY 2017. The current appropriations for FY 2017 ends on April 30, 2017. The Trump Administration is looking at starting their budget reductions for EPA and other agencies with the funding for the rest of FY 2017. The Administration sent a proposed budget for the rest of FY 2017 that reduces EPA's current funding levels by \$247 million. This includes reducing state categorical grants, Office of Research and Development funding by \$48 million (eliminating the Office of Climate Change Research), and cutting \$49 million for the Great Lakes restoration program. While these numbers do not seem as large as the cuts planned for FY 2018, one should remember that this appropriation is only for five months – May until the end of September.

In addition, the Office of Management and Budget (OMB) has asked EPA to develop plans to reduce the number of regional offices from 10 to eight. This request is part of the larger budget document for fiscal year 2018. The Agency is to work with OMB on

the plan and report the results by June 16, 2017. OMB's initial plan included cutting 50 FTEs as a part of this consolidation.

## **Nominations**

President Trump has not submitted any nominations for second level position within EPA. The trade press is not even reporting much speculation on who is being considered for these positions. There was early speculation on Andrew Wheeler (former Senate Environment and Public Works Committee staffer) and Don van de Vaart (former North Carolina environment chief) for the Deputy Administrator position. Since neither has been given the nomination, it suggests there is serious opposition to both. EPA Administrator Pruitt has hired Ryan Jackson (former staffer to Senator Jim Inhofe, R-OK) as his Chief of Staff and Mandy Gunasekera (another former staffer to Senator Inhofe) as a senior advisor. With no nominations in sight, the second level positions within EPA may not be filled until summer. Regional Administrators are often the last group of political appointees to be filled.

## **EPA actions**

EPA has moved aggressively to implement President Trump's "de-regulatory agenda." On March 2, 2017, EPA Administrator Pruitt sent a memo to all acting Assistant Administrators and Regional Administrators rescinding their authority to make decisions on "significant actions" for 30 days. All significant actions were to be routed through the Administrator's office. With only Mr. Pruitt, his Chief of Staff and a couple of senior advisors in place, this will further slow any significant actions coming out of EPA, at least for the short term.

In 2016, EPA sent letters to approximately 15,000 owners and operators in the oil and gas industry requiring information on the numbers and types of equipment at production facilities. A detailed survey on the sources of methane emissions and the control devices used to prevent emissions of methane were sent to a representative sample of these facilities. On March 1, 2017, EPA received a letter from nine state attorney generals and two governors expressing concern about the burden these requests placed on the industry. On March 7, 2017, EPA published a notice formally withdrawing these requests. The letter and the fact that EPA would like to re-assess the need for this information was listed as the reasons for this withdrawal.

In a March 22, 2017, *Federal Register* notice, EPA announced its intent to reconsider a January 12, 2017, signed rule making a determination on the greenhouse gas emissions standards (Corporate Average Fuel Economy) for model year 2022-2025 light-duty vehicles. In the notice, EPA states they intend to make the new determination before April 1, 2018. This will allow automobile manufacturers to argue that future CAFE standards should be weakened.

On March 24, 2017, EPA Administrator Scott Pruitt sent a memo to senior staff giving them instructions on how to implement Executive Order 13777, the order to reduce

regulatory burden. In this memo, Mr. Pruitt asked the heads of seven offices to provide him with a list of recommendations on how to implement this Executive Order by May 15, 2017. These seven offices include the Office of Air and Radiation and the Office of Land and Emergency Management. As a part of this effort, Mr. Pruitt stated that each office should hold a dedicated public meeting on this topic as a way to solicit ideas from the regulated community on which regulations need to be modified or withdrawn.

## **Executive Orders**

Two Clean Water Act rules appear to be the first caught up in President Trump's "two for one" executive order. The dental amalgam and an update laboratory methods rules were signed in December of 2016 but were not published in the *Federal Register* before Mr. Trump took office. As such, they were withdrawn from the Office of the Federal Register for additional review by Trump appointed officials. In the meantime, Mr. Trump signed an executive order stating that for every new regulation, the agency has to identify two existing regulations to be repealed unless prohibited by law. For either of these two rules to move forward under the new regime, the Agency now has an additional burden to identify two regulations to be repealed. In addition, several groups have challenged the legality of the executive order. Other than delaying new rules, it is not clear just how this whole idea will be implemented.

On March 28, 2017, President Trump signed an executive order to promote energy independence and economic growth. The intent of this order is to remove regulatory burdens that "unnecessarily encumber energy production, constrain economic growth, and prevent job creation." This order has several parts. First, it requires all agencies to review all existing regulations, orders, guidance, policies, and other actions that potentially burden the development or use of domestically produced oil, natural gas, coal, and nuclear energy resources. Agency heads have 45 days to submit a plan to the Director of the Office of Management and Budget, 120 days to submit a draft final report identifying specific recommendation on how to reduce this burden, and a final plan within 180 days. Second, the order withdraws several Obama Administration orders and memorandums relating to greenhouse gas emission regulations. Third, the order instructs EPA to review, suspend, revise, or rescind the Clean Power Plan. Fourth, the order disbands a working group on the social cost of carbon and withdraws all of the guidance documents on how to incorporate the social costs for carbon in the rulemaking process. Fifth, the order instructs the Department of Interior to lift all moratoria on coal leasing on federal lands. Sixth, the order instructs the Department of Interior to remove any rules that prohibit hydraulic fracturing on federal lands.

This is a wide ranging executive order that will impact future rulemakings. The removal of the social cost of carbon will have a significant impact on the cost benefit analysis for all greenhouse gas emissions rules. These include the Clean Power Plan as well as a number of Department of Energy efficiency rules. Without this "cost," it may be difficult to justify some rules. The Clean Power Plan is currently being challenged in the U. S. Court of Appeals for the District of Columbia Circuit. EPA and the Department of Justice have asked the court to halt the suit until the Agency decides what changes will

be made. If the court grants this request, the litigation will be halted until the Agency completes a new rule. It should be noted that the Supreme Court has already stayed this rule so it will not go into effect until the litigation is completed. In addition, EPA Administrator Pruitt sent a letter to the Governor of Kentucky (March 30, 2017) telling him that states have no obligation to spend resources to implement the Clean Power Plan. This letter included a sentence that states “The days of coercive federalism are over.”

## **CRAs**

The Congressional Review Act (CRA) allows Congress to repeal any rulemaking by the Executive Branch. It became a public law in 1996 and was successfully used only once prior to this administration. Under this law, a member of Congress can introduce a “resolution of disapproval” within 60 legislative days of any regulation being promulgated. This law is not subject to the filibuster rules in the Senate so it can be passed by a simple majority of both Houses. If passed by both the House and the Senate and signed by the President, that regulation is repealed and the agency cannot re-promulgate a substantially similar regulation in the future.

In February, Mr. Trump signed two resolutions of disapproval. In March, he signed an additional five. These five repealed two rules promulgated by the Department of Education, a rule promulgated by the Bureau of Land Management, one rule from the Social Security Administration, and one rule from the General Services Administration. An additional four resolutions have been sent to the President for his signature. These include a Federal Communications Commission rule, two Department of Labor rules, and one rule from the Department of Interior. Two more resolutions have passed the House and Senate but have not yet been sent to the President. One is a Department of Labor rule and the other is a Health and Human Services rule. Six resolutions of disapproval of three EPA rules have been introduced (the risk management rule, the cross-state air pollution rule, and Utah’s federal implementation plan rule). None of these resolutions have seen any activity. Congress must act on these resolutions by May 9, 2017. While there is still time for Congress to pass any or all of these three resolutions, the legislative calendars are starting to get full with the consideration of Judge Gorsuch for the Supreme Court and the need to finish the appropriations for FY 2017.

## **Enforcement**

On March 7, 2017, EPA announced a proposed consent decree with Maynard Steel Casting Company, Milwaukee, WI for violations of the Clean Air Act and RCRA. There are several requirements in the proposed consent decree but the one that caught my attention was the inclusion of a startup, shutdown, and malfunction plan as Appendix B of the consent decree. This appendix includes startup and shutdown procedures as well as a malfunction prevention and abatement plan. Additional details can be found in the *Federal Register* notice.

**CRWI meeting**

The next CRWI meeting will be held on May 17-18, 2017, in Tulsa, OK. It will feature a tour of Zeeco. For additional information, contact CRWI ([mel@crwi.org](mailto:mel@crwi.org) or 703-431-7343).