



CRWI Update March 31, 2024

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
Westlake US 2, 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
Envitech, Inc.
Eurofins TestAmerica
Focus Environmental, Inc.
Franklin Engineering Group, Inc.
Montrose Environmental Group, Inc.
Ramboll
Spectrum Environmental Solutions LLC
Strata-G, LLC
TEConsulting, LLC
Trinity Consultants
W.L. Gore and Associated, 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

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

As of March 31, 2024, the judge had not released his decision on the deadline suit. EPA continues to work on the rule based on issuing an August 2025 proposed rule.

OB/OD proposed rule

In 1980, the Agency banned the use of open burn/open detonation (OB/OD) of RCRA hazardous waste except where such wastes could not be disposed of by any other method. Late in 2023, EPA released a compendium of alternative technologies for disposing of energetic wastes. On March 20, 2024, EPA published a proposed rule that would continue the ban on OB/OD, require the use of alternative technologies where applicable, and add requirements where OB/OD was still allowed. Some of these requirements are in new Subparts Y to 40 CFR Parts 264 and 265. As proposed, it would allow an exemption for *de minimis* amounts of energetic waste. For energetic waste that is still disposed of using OB/OD, the proposed rule would add waste analysis requirements, monitoring and recordkeeping requirements, technical standards, and closure requirements. For units that change to alternative technologies, the Agency is asking for comments on how these units should be permitted. Comments are due by May 20, 2024.

All Appropriate Inquiries proposed amendments

On March 12, 2025, EPA proposed to modify the standards and practices for All Appropriate Inquiries to allow the use of ASTM International E2247-23 to be used for site assessments. The comment period ends on April 11, 2024.

Iron and steel final rule

On March 11, 2024, EPA released a signed version of the technology review of the iron and steel MACT rule. EPA added emission limits for several previously unregulated pollutants. These included carbonyl sulfide, carbon disulfide, mercury, hydrofluoric acid, and hydrochloric acid for sinter plants and dioxin/furans and total hydrocarbon as a surrogate for non-dioxin/furans organic hazardous air pollutants for blast furnaces. In addition, each facility

will be required to install and operate four ambient air chromium monitors at or near the fence line and collect data from each monitor every six days. If an action level is exceeded, the facility will be required to conduct a root cause analysis and take corrective action to reduce emissions. EPA does not have an approved method for ambient air monitoring for chromium. The preamble states that the Agency will develop and release the method prior to the requirement going into effect.

RMP final rule

The risk management program (RMP) final rule was published in the *Federal Register* on March 11, 2024. The rule becomes effective on May 10, 2024.

CWA worst case spill requirements

EPA published the Clean Water Act (CWA) hazardous spill final rule on March 28, 2024. The final rule sets requirements for worst case discharges of hazardous substances into or on the navigable waters of the U.S. The final regulations include an exemption for hazardous waste treatment, storage, and disposal facilities and certain generators of hazardous waste because these facilities already have plans in place for these situations. The rule becomes effective on May 28, 2024.

Disposal of pharmaceutical waste website

EPA has launched a website to aid with the proper disposal of pharmaceutical wastes. While it does not appear that the website offers new information, it puts current options in one location. The site can be found at <https://www.epa.gov/household-medication-disposal>.

Boiler litigation oral arguments

Oral arguments for the boiler rule litigation were held on March 21, 2024. Environmental groups challenged EPA's use of the 2013 database to set revised standards and industry challenged the 2010 proposal date for defining a new source. During oral arguments, the judges appeared skeptical of EPA's position on the new source date and the environmental groups assertion that data from 2013 until 2020 should have been included in the calculations of emission limits. However, one should always be reluctant to predict outcomes based on oral arguments. The line of questioning by the judges is not a reliable predictor of outcome. A ruling is expected in the next three months.

Environmental groups filed a petition for reconsideration on the use of carbon monoxide as a surrogate for organic hazardous air pollutants and the use of a threshold for carbon monoxide. EPA has not responded to that petition.

Formosa permit litigation

Formosa is planning to build a chemical manufacturing complex in St. James Parish, Louisiana. They submitted applications for 15 permits for the facility. On January 6, 2020, the Louisiana Department of Environmental Quality (LDEQ) issued all permits. Several environmental groups challenged these permits alleging a number of errors and the LDEQ environmental justice analysis used to support the permits. On September 8, 2022, a state district judge vacated all of the permits. Both LDEQ and Formosa appealed that decision. On January 19, 2024, a state appeals court overturned the district court decision and reinstated all permits. The appeals court found that the permits were not in violation of any constitutional or statutory law, were not arbitrary or capricious, and did not abuse any discretion allowed to LDEQ. On March 18, 2024, the environmental groups petitioned the Louisiana Supreme Court to overturn the state appeals court decision.

SSM SIP opinion

On March 1, 2024, the U.S. Court of Appeals for the District of Columbia Circuit released their opinion on the challenge to EPA's State Implementation Plan (SIP) requirement that several states needed to remove startup, shutdown, and malfunction (SSM) provisions from their plans. The challenge by industry raised four issues. Some SIPs include "automatic exemptions," which exclude SSM periods from otherwise applicable emission rules. The court vacated the SIP calls based on this provision because EPA did not complete a "necessary and appropriate" finding as required in the Clean Air Act. Other SIPs include "director's discretion" provisions, which allow state officials to independently and conclusively decide that excess emissions are not violations during SSM periods. These calls were vacated for the same reason.

Tennessee's SIP includes provisions that EPA believed could be read to allow state officials to excuse emission violations during SSM periods in a way that forecloses EPA or citizen-suit enforcement. EPA called those "overbroad enforcement discretion" provisions. Unlike director's discretion provisions, which let state officials determine that there is no violation, overbroad enforcement discretion provisions let state officials recognize that a violation happened but bar enforcement. The court denied this claim and the Tennessee SIP call remains. Many SIPs include affirmative defenses for excess emissions that occur during SSM periods. Some affirmative defenses protect sources against all liability, while others protect only against certain forms of relief. The court's response to this claim was broken into two parts. Some SIPs provide "a complete affirmative defense to an action brought for non-compliance" with an emission rule, provided the source complies with certain conditions as in the Arkansas Code. These calls were vacated for the reasons discussed above. Other SIPs preclude certain remedies after a source has violated an emission rule as in the Arizona Code. This was upheld because the states cannot limit the relief that Congress empowered to the courts.

EPA asked for an extension of the time needed to file a motion for re-hearing. When the mandate is issued, EPA will be required to withdraw any SIP calls based on automatic exemptions, director's discretion, and affirmative defense provisions based on the source complying with certain conditions. There is considerable debate amongst observers on the exact implications of the ruling. Some believe that the Agency will be able to reissue them once they resolve the failure to make the "necessary and appropriate" findings as required in the Act. Others think it will be difficult for the Agency to re-issue SIP calls for these issues. In addition, the court also stated that the 2008 Sierra Club decision that requires some emission limitations must apply at all times did not apply to SIPs.

Enforcement

On March 20, 2024, EPA announced a settlement agreement with the Arkansas Midland Railroad Company to resolve issues with the storage of o-chlorotoluene in 34 unsecured and unsupervised rail cars on section of private track in Hot Springs, AR. The agreement includes a \$910,985 civil penalty and requires the company to remove the materials and dispose of it at a permitted hazardous waste facility.

Environmental justice

In December 2023, a number of environmental groups filed a complaint alleging "disparate impact, discriminatory treatment, and racially disparate impacts" caused by Alabama Department of Environmental Management's issuing of five permits for facilities in the Mobile area. The permits were issued to Plains Marketing, AL Bulk Terminal, Kimberly Clark, Alabama Shipyard, and Universal Oil Products. On March 11, 2024, EPA's Office of External Civil Rights Compliance accepted the complaint and agreed to investigate the state's permitting program.

On March 26, 2024, EPA announced more than \$35 million in grants to fund environmental justice projects in the Great Lakes regions. All of these grants are to aid in developing and implementing future environmental grants programs as follows:

- Restore America's Estuaries will receive almost \$20 million for the entire region;
- Buffalo Niagara Waterkeepers, Inc. will receive \$5.6 million for Lake Erie and the Niagara River;
- Ohio Lake Erie Commission will receive \$5.8 million for Ohio's Lake Erie watershed; and
- Southeast Michigan Council of Governments will receive \$4.2 million for Southeastern Michigan.

CRWI meetings

Our next meeting will be on May 15-16, 2024 in Kansas City, MO. Please contact CRWI (mel@crwi.org or 703-431-7343) if you are interested in attending.