



CRWI Update May 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
Formosa Plastics Corporation, USA

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

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Boiler litigation

On May 23, 2017, EPA filed a brief urging the Supreme Court to reject American Municipal Power's (AMP) petition to review the Appeals Court decision on malfunctions. In the brief, EPA argued that the current ruling is a permissible interpretation of section 112 of the Clean Air Act, it would be difficult for EPA to take into account all of the possible malfunctions, and the petition overstates the practical impacts of the current malfunction provisions. In addition, EPA's brief argues that AMP's suggestion that accidental releases should be governed under section 112(r) is not properly before the court because this idea was not brought up during the notice and comment periods for the rulemaking. The brief also notes that other industry groups have not joined the challenge and suggests that this is evidence that the provision is of limited use. The current Supreme Court term will end June 30. The next term will start on October 1, 2017. Petitioners will not know whether the Supreme Court has granted the petition until the schedule for the next term is announced.

The U.S. Court of Appeals for the District of Columbia Circuit has not announced a date for oral arguments in the second boiler reconsideration litigation. Final briefs were filed on February 6, 2017. In this litigation, the environmental groups are challenging the 130 ppm CO threshold and the use of work practices for startup and shutdown.

Generator rule litigation

On May 22, 2017, EPA and the industry petitioners filed a joint motion asking the U.S. Court of Appeals for the District of Columbia Circuit to stay the litigation on the challenges to the revised waste generator rule to allow for settlement discussions. While industry supported most of the 2016 changes in RCRA generator regulations, they are concerned about the ramification of the new rules on failure to meet all of the conditions for exemption. If no one opposes, the court is likely to grant the motion. This would allow EPA and industry to address the concerns.

RTR deadline appealed

On March 22, 2017, a U.S. District Court for the District of Columbia judge set a June 30, 2020, deadline for EPA to complete 13 risk and technology review (RTR) rules (*Blue Ridge Environmental Defense League, et al. v. Scott Pruitt*). On May 30, 2017, EPA filed a petition with the U.S. Court of Appeals for the District of Columbia Circuit challenging that ruling. It should be noted that on March 13, 2017, a different district court judge set a similar deadline for 20 RTR rules (*CCAT v. EPA*). EPA has not indicated whether they will challenge the deadlines for the 20 RTR rules. Regardless of any challenges, the Agency has to continue working on the rules based on the current deadlines until they get a decision from the Appeals Court.

Regulatory reform

In response to Executive Order 13777, EPA solicited suggestions on how they should repeal, replace or modify existing regulations. The Office of Air and Radiation and the Office of Land and Emergency Response held public meetings. By the close of the comment period (May 15, 2017), EPA had received over 300,000 comments from industry, individuals, environmental groups, and states. Some of these comments suggested dozens of regulations that should be changed. The environmental groups and some individuals encouraged the Agency to continue to protect human health and the environment. Surprisingly, certain industry and states suggestions were similar. For example, both supported rescinding the “once in, always in” policy. States were also interested in eliminating the public meeting requirement for RCRA class 2 permit modifications. In other cases, companies pushed for the elimination of programs that create problems for their specific industry sector. It will take the Agency some time to sort through the comments and create a list of regulations they want to revise. A cynical observer would look at this as an opportunity for the Agency to identify the list of regulations to be revised or eliminated to fulfill another Executive Order (13771) requirement that two regulations must be identified for repeal for every new regulation. Other than requiring an initial report to the head of the agency or department by May 15, 2017, Executive Order 13777 does not include any other deadlines. It is unclear when EPA will release its list of regulations to be repealed, replaced, or modified.

EPA rulemakings

The new administration has started sending major EPA rules to the Office of Management and Budget (OMB) for review. There are now seven major rules at OMB. They are:

- Renewable fuels standards;
- Emissions standards for the oil and gas sector;
- An extension of the stay of the municipal solid waste landfill performance standards;
- Stay of the emissions guidelines and compliance times for municipal solid waste landfills;

- Procedures for prioritization of chemicals for risk evaluations under TSCA;
- State permit guidance for coal combustion residuals; and
- The definition of the water of the United States.

OMB typically takes up to 90 days to review a rule. The first submitted was the waters of the U.S. rule. However, that does not mean it will be the first out. Some of the less complicated or controversial rules may be cleared first.

Delisting petitions

On May 31, 2017, EPA published a proposed rule to delist secondary impoundment basin solids from the list of hazardous wastes at ExxonMobil's Beaumont Refinery. These solids are currently listed as F037 (primary oil/water/solid separation sludge) and F038 (secondary oil/water/solids separation sludge). If delisted, this material would be transported to an authorized solid waste landfill in containers for disposal. EPA will take comment on this proposed action until June 30, 2017.

Obama Administration rules

When the Trump Administration took office, they immediately suspended a number of recent Obama Administration rules and guidance documents so that the new administration could review them. During that time, the new administration granted reconsideration for some, entered into agreements to revise others, and let the majority go into effect. In March, the Trump Administration extended the review for five of these actions until May 22, 2017. These included two policies and three rules. On May 11, 2017, EPA announced that the implementation of the pesticide applicators rule would be delayed an additional 12 months to allow states more time to ensure compliance. In a May 24, 2017, *Federal Register* notice, EPA delayed the effective date of selected provisions of the formaldehyde emissions limits on composite wood products by several months to give industry more time to comply. The other three (air quality modeling guidelines for ozone and particulate matter, revised administrative rules for civil penalties, and a rule allowing Superfund sites to be listed based solely on subsurface intrusion) were allowed to go into effect on May 22, 2017. In addition, on May 23, 2017, EPA announced a 90-day stay of the new source performance standards for municipal waste landfills while the Agency considers a petition for reconsideration. Finally, on May 31, 2017, EPA announced a 90-day stay of the fugitive emissions, pneumatic pump, and professional engineer certification requirements of the revised standards for new, reconstructed, and modified oil and gas sources.

E-manifest

EPA held a webinar on their progress in developing an e-manifest system on May 31, 2017. The Agency started conducting user testing in February 2017. Based on feedback from that initial use, EPA intends to release a refined version in June 2017. In addition, EPA plans "one-on-one usability" testing of the revised system. Companies interested in volunteering for this testing should contact EPA at emanifest@epa.gov.

EPA anticipates sending the e-manifest fees final rule to the Office of Management and Budget in late June. The final rule should be published in December 2017. The Agency has started their outreach to stakeholders and expects to continue this outreach with training sessions for the Regions and states in the Fall.

Superfund authority rescinded

On May 9, 2017, EPA Administrator Pruitt sent a memo to the Assistant Administrator for the Office of Land and Emergency Response (OLEM) and Regional Administrators rescinding the authority for these offices to make decisions on records of decision that cost more than \$50 million. This authority would now be in the Office of the Administrator. On May 22, 2017, Mr. Pruitt announced the formation of a task force to provide detailed recommendations on how to streamline and overhaul the Superfund program. The task force will be headed by Albert Kelly, a senior advisor to the Administrator, and will include personnel from OLEM, the Office of Enforcement and Compliance Assurance, the Office of General Counsel, EPA Region 3 (lead region for Superfund), and other offices, as appropriate. The task force has been given 30 days to develop the recommendations. This is widely seen as a step in Mr. Pruitt's pledge to restore Superfund and land and water cleanup as "core missions" of the Agency.

EPA nomination

On May 16, 2017, President Trump nominated Susan Bodine to be the next EPA Assistant Administrator for the Office of Enforcement and Compliance Assurance. Ms. Bodine was the Assistant Administrator for the Office of Solid Waste and Emergency Response in the second Bush Administration. She is currently the chief counsel for the Senate Environment and Public Works Committee. Ms. Bodine is respected by both Republicans and Democrats. It does not appear that her nomination will create much controversy. Nominees for additional EPA positions have not been identified.

On a side note, a number of recent Trump Administration appointments to second tier positions have been confirmed by the Senate with little fanfare. Only time will tell if this is a trend or just a lull.

EPA budget

The Trump Administration submitted their fiscal year 2018 budget to Congress on May 23, 2017. As expected, this budget calls for reducing EPA's appropriations from \$8.1 billion to \$5.7 billion, a 31% cut in funding. The hardest hit section is climate change program with all sectors suffering cuts and several being eliminated. In addition, the FY 2018 budget also reduces EPA's full-time equivalents (FTE) from the current level of 15,376 to 11,611, a 25% reduction. Details on justification for the proposed funding for each program can be found at <https://www.epa.gov/planandbudget/fy2018>. It should be noted that the Executive Branch requests funding but Congress controls the purse strings. Just because the Executive Branch requests a certain amount of money for certain projects does not mean that Congress is going to agree. For example, the

proposed FY 2018 budget calls for the elimination of the Great Lakes and Chesapeake Bay clean up funds. These funds are used by several states. Representatives and Senators from these states will likely attempt to restore these funds before the appropriations bill for EPA is passed. There are many examples of where Congress has told a federal agency to spend money on a certain program in a certain state. This is a long-held tradition in Congress that will not disappear in this session. While it is too early in the process to guess the level of the final funding for FY 2018, a glimpse of what might happen can be gathered from the passage of the rest of FY 2017 appropriations. After several continuing resolutions, the final 2017 appropriations were passed on a bipartisan vote with very few reductions in either funds or FTEs. In fact, Congress put a statement in the FY 2017 final appropriations bill that prohibits the Administration from downsizing or re-organizing without specific consent from Congress. Finally, it is unlikely that the final appropriations will be completed before the end of the current fiscal year (September 30, 2017). If Congress does not meet the September 30 deadline, there will be a continuing resolution probably funding each department at current levels. This has happened for the past several years and there are no indications that the current Congress will be any better at getting individual appropriations bill completed by the end of the fiscal year. The need for a continuing resolution and possibly combining all 12 appropriations bills into an omnibus funding bill could further complicate the process.

Regional office closures

In March, the Office of Management and Budget (OMB) asked EPA for plans to reduce the number of regional offices from ten to eight. In April, the Chicago Sun-Times reported that EPA Region 5 would be consolidated with Region 7, closing the Chicago office. Acting Regional Administrator for Region 5 Robert Kaplan sent an email to staff denying the story and EPA Headquarters responded that there are no firm plans to close any particular office. On May 4, 2017, the Democrat members of the Senate Environment and Public Works Committee asked EPA Administrator Pruitt for a personal commitment not to close two regional offices as suggested by OMB. Mr. Pruitt has not responded to the letter.

CRA

Until this Congress, the Congressional Review Act (CRA) had only been used once to repeal a previous administration's regulation. Under the Trump Administration, this legislation was successfully used to repeal 14 Obama Administration regulations. Although resolutions of disapproval for three EPA rules were introduced, none were acted upon. The legislation limits Congress' ability to act on resolutions of disapproval to the first 60 legislative days of a new session. That deadline has passed so no new resolutions of disapproval for Obama Administration rules will be introduced.

Enforcement

In a May 11, 2017, *Federal Register* notice, EPA announced a proposed consent decree with PPG Industries Ohio, Inc. for civil penalties and injunctive relief for alleged violations of Clean Air Act requirements to limit fugitive emissions from valves and open-ended lines, and requirements to reduce emissions from storage tanks at its resin manufacturing plant in Delaware, OH. Under the proposed consent decree, PPG will implement an enhanced leak detection and repair program and pay a civil penalty of \$225,000.

In a May 23, 2017, *Federal Register* notice, EPA announced a proposed consent decree with Vopak Terminal Deer Park, Inc. over alleged violations at their bulk chemical storage facility located on the Houston Ship Channel. Under the proposed agreement, Vopak will construct and operate a flare and other emission control devices at its wastewater treatment plant, implement an advanced tank inspection program, hire a third-party auditor to review its waste minimization practices, and take other measures to come into compliance with Clean Air Act requirements. In addition, Vopak will pay a \$2.5 million fine.

Citizen science

EPA will hold a webinar on June 7, 2017, at 1:00 pm EDT on the citizen science air monitoring. It will provide an overview of the tools the public can use to gather data. It will include discussions of low-cost (less than \$2,500) air sensor technologies and best practices for successful air monitoring projects. This will include ideas on collection and analysis of data. The webinar will include community representatives to talk about current projects and lessons learned. Contact Lena Epps-Price (919-541-5573 or epps-price.lena@epa.gov) for additional information. Pre-registration is not required. You can log onto the webinar at <https://epawebconferencing.acms.com/ej-citizen-science>. The call-in number is 800-309-5450, conference ID: 30572444.

CRWI meeting

The next CRWI meeting will be held on August 15-16, 2017, in Indianapolis, IN. It will feature a tour of Covanta's waste-to-energy facility. For additional information, contact CRWI (mel@crwi.org or 703-431-7343).