



CRWI Update May 31, 2018

MEMBER COMPANIES

Clean Harbors Environmental Services
DowDuPont
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
Burns & McDonnell, Inc.
Coterie Environmental, LLC
Focus Environmental, Inc.
Franklin Engineering Group, Inc.
METCO Environmental, Inc.
O'Brien & Gere
Spectrum Environmental Solutions LLC
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 April 30, 2018, Sierra Club requested a rehearing on the startup and shutdown work practice portion of the March 16, 2018, boiler litigation decision. Sierra Club alleged the panel made three errors in their ruling. On May 14, 2018, the court ordered EPA and the intervenors to file a response to Sierra Club's request for rehearing. The response is due on June 5, 2018.

CISWI technical amendments

Since the publication of the 2016 Commercial and Industrial Solid Waste Incineration (CISWI) emission guidelines, stakeholders have pointed out a number of implementation concerns and regulatory inconsistencies. On May 9, 2018, EPA Administrator Pruitt signed a proposed rule to address these issues. The issues addressed in the proposed rule are:

- Allow the use of an alternative production-based emission limit for mercury for the waste-burning kiln subcategory;
- Modify the timing of the initial performance evaluation for continuous monitoring systems (now within 60 days of installation) to match the 180 day requirement for an initial performance test so that both test can be completed at the same time;
- Modify the requirement for electronic submission of initial, annual, and deviation reports to two years after the rule is finalized or one year after the reporting forms become available on CEDRI, whichever is later;
- Remove small power producers and qualifying cogeneration facilities that combust solid waste from the list of non-delegated authorities;
- Clarify that continuous emissions monitors can be used to show initial compliance;
- Remove the continuous opacity monitoring requirements for energy recovery units with design heat inputs between 10 and 250 MMBtus/hr that are equipped with electrostatic precipitators, particulate matter CEMs, or particulate matter continuous parameter monitoring systems;

- Remove the CO CEMs requirement for new waste-burning kilns;
- Remove outdated notification requirements when particulate matter CEMs are used;
- Clarify that the intended sequence for the skip testing option is to show emissions less than 75% for two years, skip testing for two year followed by an annual test meeting the 75% threshold, followed by skipping two years, etc.;
- Clarify that exceeding a 30-day average for any continuously recorded data must be included in a deviations report; and
- Clarify the requirements for air curtain incinerators.

Once published in the *Federal Register*, the proposed rule will have a 45 day comment period.

RTR proposed rules

EPA published two risk and technology proposed rules in May. The first was on May 3, 2018, for friction materials manufacturing and the second was on May 16, 2018, for surface coating of wood building products. Neither proposes to add requirements due to either risk or technology review. However, both propose to remove startup, shutdown, and malfunction provisions and to require electronic reporting of test results. Comments for both are due mid-June.

RMP proposed rule

In 2013, an explosion occurred at a West, TX fertilizer facility that killed 15 people, including first responders. President Obama issued an executive order directing EPA and OSHA to write regulations that would improve industry safety. Both EPA and OSHA started the process with EPA looking at their Risk Management Plan (RMP) requirements and OSHA looking at their Process Safety Management (PSM) requirements. EPA published a final rule updating RMP requirements on January 13, 2017. By this time, investigators concluded the explosion was caused by a deliberately set fire. OSHA worked on updating their PSM requirements but has not taken any actions to modify them. Shortly after taking office, the Trump Administration took several steps to delay the implementation of the RMP rule eventually delaying the effective date until February 19, 2019. On May 30, 2018, EPA published a proposed rule that would rescind a majority of the 2017 requirements. EPA proposes to rescind the safer technology and alternatives analysis, third-party audits, incident investigations, and information availability. While the requirements to coordinate with emergency responders remain, the proposed rule would modify these provisions and change the compliance dates. The comment period closes on July 30, 2018.

CSB report on Arkema incident

The Arkema chemical plant in Crosby, TX had 19.5 tons of organic peroxides stored at the facility in 2017. This material requires refrigeration to prevent ignition. Extensive flooding due to heavy rainfall from Hurricane Harvey caused the plant to lose power and

backup power to all of its low temperature warehouses. Workers moved the organic peroxides from the warehouses to the refrigerated trailers, which were then relocated to a higher elevation area of the plant. Three of those trailers could not be moved and one eventually flooded and caught fire. Residents within 1.5 miles were evacuated as a precaution. Fifteen emergency workers went to the hospital. Two more trailers caught fire and burned. When the other five trailers did not catch fire, the company stepped in and did a controlled burn to remove the hazard.

On May 24, 2018, the Chemical Safety Board released their report on the incident and made several recommendations. The first was a re-iteration of their recommendation that EPA revise their RMP requirements to cover catastrophic reactive hazards resulting from the management of self-reactive chemicals. The second was for the Arkema Crosby facility to reduce the flood risk to “as low as reasonably practicable.” The third was for Arkema to develop policies on handling highly hazardous chemicals in areas where they are at risk from extreme weather events such as hurricanes or floods. The fourth is for the American Institute of Chemical Engineers Center for Chemical Process Safety to develop comprehensive guidance addressing the risks from extreme weather events. A copy of the report can be found at <https://www.csb.gov/csb-releases-arkema-final-report/>.

DSW

In 2017, the U.S. Court of Appeals for the District of Columbia Circuit vacated certain provisions of the 2015 Definition of Solid Waste (DSW) final rule. The Court clarified that ruling on March 6, 2018. On May 30, 2018, EPA implemented the court rulings by publishing a final rule that removed the 2015 verified recycler exclusion, re-instated the 2008 transfer-based exclusion, removed the 2015 requirement that legitimacy criteria factor 4 be mandatory, and re-instated the 2008 version of factor 4 (must be considered). The rule was effective on the publication date.

ADI

On a periodic basis, EPA compiles and uploads applicability determinations, alternative monitoring decisions, and regulatory interpretations made in association with New Source Performance Standards, National Emission Standards for Hazardous Air Pollutants, and emission guidelines. The latest set was uploaded on April 24, 2018. It contains 54 new determinations. One (M170005) is an alternative relative accuracy procedure for liquid hazardous waste boilers. The entire list (Applicability Determination Index – ADI) can be found at <https://cfpub.epa.gov/adi/>.

CRA

On May 21, 2018, President Trump signed S. J. Res. 57 into law. This was a resolution of disapproval under the Congressional Review Act (CRA) that repealed a 2013 Consumer Financial Protection Bureau guidance document on auto lending. This action is noteworthy for two reasons. First, it repeals a guidance document, not a rulemaking.

Second, it repeals a 2013 action. Under CRA, agencies must submit rules to Congress for their approval. Congress then has 60 legislative days to act on a resolution of disapproval. Agencies typically do not submit guidance documents to Congress. In this case, Senator Pat Toomey (R-PA) asked the Government Accountability Office (GAO) if this particular guidance document would be considered as a “rule” under the CRA. GAO responded that the guidance was a general statement of policy to assist auto lenders be in compliance with federal laws and thus was covered by the CRA. This forced the Consumer Financial Protection Bureau to submit the guidance to Congress which they did in December 2017, triggering the 60 legislative day clock. While this does not open additional rules from previous administrations to potential repeal by Congress (since they were submitted to Congress and the 60 legislative day clock has expired), it certainly expands the actions covered under CRA. Should other “guidance” documents be identified as candidates for repeal, this may provide a mechanism for Congressional review.

Enforcement

In April 2018, the IRS published a guidance bulletin (No. 2018-15) on when money spent on coming into compliance with enforcement actions could be considered as tax-deductible. In a May 25, 2018, modification of a December 2017 consent decree (USA v. Columbian Chemicals Company), EPA added language that would allow some of the defendants compliance costs to be deductible under the new tax guidance. This was submitted to the U.S. District Court for the Western District of Louisiana for approval.

On May 15, 2018, EPA released a fact sheet announcing a renewed emphasis on encouraging facilities to voluntarily discover, disclose, correct, and take steps to prevent future occurrences of violations. In the fact sheet, EPA reminded facilities that the current policy eliminates certain civil penalties, allows the Agency to waive certain economic benefits, does not require an affirmative admission that a violation has occurred, and gives facilities a defined period to correct violations. The fact sheet can be found at <https://www.epa.gov/compliance/epa-announces-renewed-emphasis-self-disclosed-violation-policies>.

EPA personnel

On May 18, 2018, EPA Administrator Pruitt announced that Mike Stoker has been appointed as the Regional Administrator for Region 9. Mr. Stoker is a lawyer who was recently the director for government affairs for UnitedAg, an agricultural association in California. All regions now have administrators.

Hearings for Peter Wright to be the next Assistant Administrator for the Office of Land and Emergency Management have not been scheduled.

CRWI meeting

The next CRWI meeting will be held in mid-August in Minneapolis, MN. It will feature a tour of 3M's incineration facilities and a discussion on citizen science. For additional information, contact CRWI (mel@crwi.org or 703-431-7343).