



CRWI Update May 31, 2019

MEMBER COMPANIES

Clean Harbors Environmental Services
Eastman Chemical Company
Heritage Thermal Services
INVISTA S.à.r.l.
3M
Ross Incineration Services, Inc.
The Dow Chemical Company
Veolia ES Technical Services, LLC

GENERATOR MEMBERS

Eli Lilly and Company
Formosa Plastics Corporation, USA

ASSOCIATE MEMBERS

AECOM
Alliance Source Testing LLC
B3 Systems
Civil & Environmental Consultants, Inc.
Coterie Environmental, LLC
Focus Environmental, Inc.
Franklin Engineering Group, Inc.
METCO Environmental, Inc.
Montrose Environmental Group, Inc.
O'Brien & Gere
Spectrum Environmental Solutions LLC
Strata-G, LLC
SYA/Trinity Consultants
TestAmerica Laboratories, Inc.
TRC Environmental Corporation
W. L. Gore and Associates, 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

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PFAS

PFAS (per- and polyfluoroalkyl substances) issues continue to be in the news. On March 25, 2019, the State of New Jersey issued a directive to Solvay, DuPont, DowDuPont, Chemours, and 3M notifying the companies that the State believes them to be responsible for significant PFAS contamination of the air and waters of the State. The directive requires each company to supply the State with a complete accounting of the historical and current development, manufacture, transport, use, storage, release, discharge, and/or disposal of PFAS compounds in New Jersey. In addition, the State asked Solvay to reimburse the State \$3.1 million for cleanup activities surrounding the company's West Deptford facility. All companies have indicated a willingness to discuss these issues with the State but are declining to comply with the directive. One general theme that is used in the denials is that the New Jersey Spill Compensation and Control Act applies to "hazardous substances." While New Jersey has proposed to list certain PFAS compounds as "hazardous substances," that designation has not been made. The companies argued that directive is premature.

On May 1, 2019, EPA announced two grants designed to develop additional information on PFAS compounds. One went to the Colorado School of Mines to research the fate, transport, bioaccumulation, and exposure to a representative suite of PFAS compounds. The second went to Oregon State University to study the toxicity of a number of PFAS and PFAS mixtures using the zebrafish assay and mice studies. The goal of this work is to identify which PFASs are the most toxic. EPA states that this is required before any priorities can be developed for reducing human exposure and environmental risks.

On May 6, 2019, the Environmental Working Group released a study identifying 610 locations in 43 states that have known PFAS contamination. They developed a map showing these locations using public data from water systems, military bases, airports, industrial plants, firefighter training sites, and dump sites. Michigan has the most sites (192), California has the second most sites (47) and New Jersey comes in third with 43. It is unclear from the webpage what criteria (presence of a single

PFAS, present above a certain threshold, etc.) were used to put a location on the map. The report and the map can be found at <https://www.ewg.org/research/update-mapping-expanding-pfas-crisis>.

The House Energy and Commerce Committee held their first hearing on PFAS issues on May 15, 2019. The committee heard from six panelist (Natural Resources Defense Council, East Carolina University, a community member, the manager of the Ann Arbor water treatment services, the Executive Director of the American Waterworks Association, and a lawyer) on various PFAS issues. Some panelists urged the committee to regulate all PFAS compounds as a single class while others cautioned that not all PFAS compounds have equal environmental impacts. EPA was not represented on the panel. To date, there are 13 different bills in the House that address PFAS issues. Some would designate various PFAS compounds as “hazardous substances” while others would compel the Department of Defense to cleanup PFAS contamination in and around military facilities. Included in this list is a bill (H.R. 2591) to prohibit the incineration of PFAS compounds. There likely will be additional hearings to allow the committee to build the record on the issue. While it is not clear what form legislation will take, there appears to be bipartisan agreement that legislation on the PFAS issue is needed.

In 2015, the Consumer Products Safety Commission (CPSC) received a petition to ban the use of organohalogen flame retardants (OFR) from certain consumer products. The petition requested that all OFRs be treated as a class of compounds. The CPSC did not have sufficient information to respond to the question so they asked the National Academy of Science (NAS) to develop recommendations. On May 15, 2019, the NAS released their report. The NAS committee looked at 161 OFR compounds and identified analogues based on functional, structural, and predicted biological activity. NAS concluded that these compounds cannot be treated as a single class but identified 14 subclasses that could be used to conduct subclass-based hazard assessments. A copy of the report can be found at <https://www.nap.edu/catalog/25412/a-class-approach-to-hazard-assessment-of-organohalogen-flame-retardants>.

Spring 2019 Unified Agenda

Twice a year, all federal agencies are required to publish a list of the rules on which they are currently working. EPA’s latest version was released on May 22, 2019. As would be expected from the court-ordered deadlines, the Office of Air has the largest number of rules in the agenda. A significant portion of the Air Office rules are risk and technology reviews of MACT standards. EPA has added two proposed rules relating to PFAS compounds: one to list certain PFAS compounds as hazardous substances under CERCLA; and the other to add certain PFAS compounds to the TRI reporting lists. The current agenda estimates the revisions to the boiler rule will be available in September 2019 and the RMP final rule has been delayed until August 2019. EPA added a proposed rule addressing the remands for the Brick MACT rulemaking. Issues to be addressed in this rulemaking will include the use of health-based standards for acid gases and the use of the upper prediction limit method for setting standard that have

limited datasets. The current agenda can be found at <https://www.reginfo.gov/public/do/eAgendaMain>.

RTR proposed rules

In May, EPA published three risk and technology review proposed rules. For the engine test stands (May 8, 2019) and the boat manufacturing and reinforced plastic composite (May 17, 2019) source categories, EPA found the risks due to emissions to be acceptable and identified no new cost-effective controls (technology review). For these source categories, the Agency is proposing to remove startup, shutdown, and malfunction provisions and require electronic reporting of test results. For the asphalt processing source proposed rule (May 2, 2019), the Agency is not adding requirements based on either risk or technology review. They are proposing to remove startup, shutdown, and malfunction provisions and require electronic reporting of test results. However, for this source category, the Agency is proposing to add periodic performance testing requirements, notification of compliance status reports, and revised monitoring requirements for PM control devices. Each has a 45 day comment period.

E-Manifest advisory board meeting

The Hazardous Waste Electronic System Advisory Board will hold a three day meeting on June 18-20, 2019 in Arlington, VA. Additional detail on the meeting can be found in the May 10, 2019, *Federal Register* notice.

Enforcement and compliance communications

EPA has been working on a policy to enhance the communications between the states and the regions/headquarters on enforcement and compliance. On May 13, 2019, the Agency published their final memo outlining how these communications were to take place and who has the responsibility for certain actions. This document has three parts: periodic joint planning; the roles of each in implementing the compliance and enforcement policy; and a method for elevating issues should there be a disagreement. The goals for the joint planning are:

- No surprises for either the states or EPA on any inspection or enforcement actions;
- Periodic joint meetings of states and regions to discuss individual inspections and enforcement actions;
- Coordinate inspections to avoid duplicate efforts (avoid overlapping inspections of the same facility for the same regulatory requirements within the same year);
- Regions to provide states with advanced notice of inspections;
- States and regions should invite each other to participate in any inspection;
- Joint planning for enforcement actions, identifying who will take the lead;
- Where the state will take the lead, the state and EPA will discuss how the claims are made and the specific relief sought;

- Where EPA takes the lead, the state will be notified before notifying the facility; and
- Where joint enforcement, periodic updates are needed to keep both parties informed of progress.

On the roles of EPA and the states in implementing authorized programs, the document states that:

- In general, EPA will defer to the states as the primary implementer of both inspections and enforcement;
- EPA retains concurrent authority and there may be certain situations where EPA decides to take additional action;
- Under the National Compliance Initiative, EPA may take the lead in certain areas;
- EPA may take direct action in an emergency situation or where there is substantial risk to human health;
- EPA may take the lead where the state does not have the equipment, resources, or expertise;
- EPA should take the lead where non-compliance is at multiple sites in multiple states;
- EPA may take action where the state is not taking timely and appropriate action;
- Most environmental criminal enforcement will be done by EPA because most states do not have environmental criminal enforcement programs;
- EPA has a statutory authority to conduct a limited number of inspections to verify the efficacy of a state program; and
- EPA will take the lead on any federal or state owned or operated facility.

The document states that issues should be resolved at the lowest level possible (career management level). If this does not work, any issue should be elevated to senior management (Regional Administrator and State commissioner) within 30 days. If not resolved in 60 days, the issue should be elevated to the Assistant Administrator for the Office of Enforcement and Compliance Assurance for a decision.

Although this is considered as a final document, the Agency is taking comments until June 12, 2019.

EPA budgets

Congress has started working on fiscal year 2020 appropriations. The Trump Administration submitted a proposed budget in March calling for a 25% reduction in funding for EPA. The Democrat controlled House of Representatives has ignored that request and is instead proposing to increase the Agency's budget by \$670 million over FY 2019 levels. A large part of this increase is slated for the Clean Water and Drinking Water State Revolving Funds. Some of this increase may be a result of the recent concerns with per- and polyfluoroalkyl substances contamination. The current House legislation also removed a number of the "riders" that limited the Agency's ability to work

on certain issues. However, it contains report language instructing the Agency to complete a scientific review of the science transparency rule and the particulate matter scientific assessment. It should be noted that the process is still in the early stages and has not considered the levels the Senate may wish to fund.

EPA personnel

On May 1, 2019, EPA Administrator Wheeler announced that Gregory Sopkin would be the new Regional Administrator for Region 8. Mr. Sopkin most recently was a partner on the law firm of Wilkinson Baker Knauer. Prior to that, he was the chairman of the Colorado Public Utilities Commission. On May 28, 2019, Mr. Wheeler appointed Mary Walker as the Regional Administrator for Region 4. Ms. Walker was the acting Regional Administrator for Region 4. She has been career staff in Region 4 for a number of years.

CRWI meeting

The next CRWI meeting will be on August 21-22, 2019, in Port Huron, MI. It will feature a tour of Clean Harbor's Sarnia hazardous waste combustion units. For additional information, contact CRWI (mel@crwi.org or 703-431-7343).