



CRWI Update May 31, 2020

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.
Montrose Environmental Group, Inc.
Ramboll
Spectrum Environmental Solutions LLC
Strata-G, LLC
SYA/Trinity Consultants
TEConsulting, LLC
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

44121 Harry Byrd Highway, Suite 225
Ashburn, VA 20147

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

TRI listing of PFAS compounds

The 2019 National Defense Authorization Act (NDAA) required EPA to add 14 PFAS compounds by name or CAS number to the list of reportable chemicals under the Toxics Release Inventory (TRI) and gave the Agency instructions for adding additional PFAS compounds. In January, EPA responded by releasing a list of 160 compounds for which companies must report releases. In February, the Agency updated that list after determining that 12 compounds did not meet the requirements in the NDAA but that 24 additional compounds were identified that did. On May 18, 2020, EPA signed a final rule that formally added 172 PFAS compounds to the list of chemical subject to reporting under TRI. The reporting period began on January 1, 2020, with a threshold of 100 pounds per compound.

Guidance documents proposed rule

On May 22, 2020, EPA published a proposed rule that would set up a mechanism to establish the general requirements and procedures for developing significant EPA guidance documents. It also provides a procedure for the public to petition for the modification or withdrawal of an active guidance document. This rulemaking is based on the requirements under Executive Order 13891 (October 15, 2019). Guidance documents can include interpretive memos, policy statements, manuals, bulletins, advisories and other documents. Typically, guidance documents are non-binding and are not subject to notice-and-comment requirements of the Administrative Procedures Act. In the proposed rule, EPA would define “guidance document” to mean an “Agency statement of general applicability, intended to have future effect on the behavior of regulated parties, that sets forth a policy on a statutory, regulatory, or technical issue, or an interpretation of a statute or regulation.” There are several proposed exclusions to the definition. The proposed rule would also define a “significant guidance document” as a document that may reasonably be anticipated to lead to an annual effect on the economy of \$100 million or more or have an adverse effect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments. Comments are due on June 22, 2020.

RCRA civil penalty policy

On May 1, 2020, Assistant Administrator Susan Bodine sent a memo to regional counsels adding a section to EPA's RCRA civil penalty policy specifically addressing generator storage violation cases. A copy of the 2003 policy and the 2020 amendment can be found at <https://www.epa.gov/enforcement/resource-conservation-and-recovery-act-rcra-civil-penalty-policy>.

Enforcement

In 2015, EPA conducted a EEE inspection of Tradebe's hazardous waste burning lightweight aggregate kiln in Cohoes, NY. As a part of the review, the Agency requested three years of operational data (2012-2014). Based on their review of this data, the Agency determined that the facility had exceeded multiple operating parameter limits (OPL) on numerous occasions. Specifically, the facility had exceeded OPLs for maximum gas exit temperature and minimum pressure drop in the scrubber. When the facility ran their comprehensive performance test in December 2017, they exceeded the emission limits for chromium, arsenic, and beryllium. The agreement was announced on May 21, 2020, and included a \$150,000 civil penalty.

EPA PFAS research activities

EPA's Office of Research and Development (ORD) has recently posted a number of PFAS research activities on their website (<https://www.epa.gov/chemical-research/status-epa-research-and-development-pfas>). These include a method to measure PFAS in air emissions (Q4 2020), a total organic fluorine method (no date for completion), a draft report on thermal treatment of PFAS in soils (Q1 2021), a review of the current state-of-the-science for thermal treatment of PFAs (Q2 2020, initial report not expected until 2021), and several toxicity evaluations.

Litigation to stop DoD from incinerating AFFF

In February, several environmental groups filed suit in the U.S. District Court for the Northern District of California alleging that the Department of Defense (DoD) failed to prepare an environmental impact statement under the National Environmental Protection Act (NEPA) and failed to meet the requirements under the National Defense Authorization Act (NDAA) for FY 2020 when they awarded three regional contracts to manage the destruction of aqueous film forming foam (AFFF). The groups asked the court to annul the three contracts and restrict the incineration of all AFFF until the DoD conducts an environmental assessment and an environmental impact statement under NEPA, and develops sufficient information to ensure that all the provisions of NDAA are being met before resuming any incineration of AFFF. DoD responded that no incineration of AFFF was taking place in Northern California and requested a change of venue. They also filed a motion to dismiss the suit. The judge in the Northern District of California granted the motion to change the venue to a location that is locally impacted. That venue has not yet been selected. Once decided, the

judge in the new venue will have the opportunity to rule on the motions to dismiss. In the meantime, DoD has suspended shipment of AFFF to the New York facility.

FY 2021 NDAA

In January, the House of Representatives passed H.R. 535 which would extend the restrictions on Department of Defense for the incineration of aqueous film forming foam to all PFAS containing wastes from all sources, add PFAS compounds to the list of hazardous air pollutants, and add PFAS compounds to the list of hazardous wastes, among other things. The Senate has signaled they have no intention of taking up this legislation in this session. To overcome this, the proponents of H.R. 535 are working to incorporate this bill into the FY 2021 National Defense Authorization Act (NDAA).

COVID

Waste handlers asked EPA to allow transporters of hazardous waste to sign the names of generators on paper manifests in order to maintain social distancing during the pandemic. In a May 18, 2020, memo signed by the Assistant Administrators for the offices of Land and Emergency Management and Enforcement and Compliance Assurance, the Agency will allow the transporter to substitute "Generator using signature substitute due to COVID-19" in the signature box. The generator should then provide a signature substitute through a cell phone text message, email, or hard copy letter sent to the transporter and designated facility. A copy of the memo can be obtained from CRWI.

On May 19, 2020, President Trump signed an executive order requiring federal agencies to address the economic emergency caused by the COVID-19 pandemic "by rescinding, modifying, waiving, or providing exemptions from regulations and other requirements that may inhibit economic recovery, consistent with applicable law and with protection of the public health and safety, with national and homeland security, and with budgetary priorities and operational feasibility." To accomplish this, agencies shall identify regulatory standards that may inhibit economic recovery and issue rules "to temporarily or permanently rescind, modify, waive, or exempt persons or entities from those requirements, and to consider exercising appropriate temporary enforcement discretion or appropriate temporary extensions of time as provided for in enforceable agreements with respect to those requirements, for the purpose of promoting job creation and economic growth..." The order goes on to tell each agency to examine these temporary actions to see if they can be made permanent. There are no timetables mentioned in the order.

On May 21, 2020, EPA Administrator Wheeler announced the phased re-opening of EPA will start with Regions 4, 7 and 10. The first phase removes the mandatory telework but will allow for "maximum telework flexibilities." The second phase will also offer "maximum telework flexibilities" including instructions to staff that have higher risks to continue to telework. The plan will allow telework even after the second phase. This policy broadly tracks the Office of Personnel Management's phased re-opening plans.

The union representing the majority of EPA employees is opposed to the re-opening, stating that there is no evidence that re-opening right now will be safe. Meanwhile, the union and EPA reached a tentative agreement that would allow EPA staff two days of telework per week. The previous contract allowed one day per week.

In April, the Department of Justice allowed companies to delay paying environmental fines and penalties due to the pandemic. Accountability US, a watchdog group, filed Freedom of Information Act requests to determine how many companies have taken advantage of this offer. According to their report, ten companies have taken advantage of the offer while two companies (BP North America and ArcelorMittal) continued to pay their penalties.

The arguments over the use of EPA's enforcement discretion policy continues. Environmental groups filed a lawsuit asking the court to force EPA to respond to their petition for rulemaking that would require companies to publicly disclose any changes in monitoring due to the pandemic. In late April, they filed a motion for summary judgement (dismiss the case and find for the plaintiff) and a proposed order that would require EPA to respond to their petition within five days. On May 29, 2020, EPA responded with a brief opposing that motion. The judge has indicated she would not hold oral arguments but would shortly issue a ruling based on the motions. Meanwhile nine states have challenged the policy stating that it exceeds the Agency's authority and bypasses statutory mandates.

While the California Air Resources Board has rejected blanket regulatory relief during the pandemic, they are offering flexibility in certain sectors. These include giving electric automakers additional time to respond to surveys, delaying deadlines for transit agencies to submit plans to purchase zero-emission busses, and relief on the requirement that at-berth vessels hook up to shore power.

IT3 call for abstracts

The next IT3 conference will be held on January 27-28, 2021, in West Palm Beach, FL. The organizers have released a call for abstracts. Details on the on the conference and the call can be found at <https://www.awma.org/it3>. The deadline for abstract submittal is July 27, 2020.

CRWI meetings

Due to the inability of members to travel in the near future, our August 19-20, 2020, meeting will be virtual. Please contact CRWI (mel@crwi.org or 703-431-7343) if you have interest in attending.