



CRWI Update May 31, 2021

MEMBER COMPANIES

Clean Harbors Environmental Services
Eastman Chemical Company
Heritage Thermal Services
INV Nylon Chemicals Americas, LLC
3M
Ross Incineration Services, Inc.
The Dow Chemical Company
Veolia ES Technical Solutions, 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
Eurofins TestAmerica
Focus Environmental, Inc.
Franklin Engineering Group, Inc.
Montrose Environmental Group, Inc.
Ramboll
Spectrum Environmental Solutions LLC
Strata-G, LLC
SYA/Trinity Consultants
TEConsulting, LLC
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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Trump Administration rules rescinded

In May, the Biden Administration took their first steps in replacing Trump Administration EPA rules. On May 18, 2021, EPA published a *Federal Register* notice rescinding the October 19, 2020, rule requiring all active guidance documents to be included in an EPA website guidance portal before they can be used. The Agency concluded that the requirement that all active guidance documents be in the portal “deprives the EPA of necessary flexibility in determining when and how best to issue public guidance...” The notice formally removes 40 CFR Part 2 Subpart D from the Code of Federal Regulations. The rule was effective on the date of publication and EPA has removed the guidance portal from their website. For all practical purposes, the use of guidance documents reverts to where it was before the October 2020 rule was promulgated.

On December 23, 2020, EPA under President Trump published a final rule revising the methods for calculating costs and benefits under the Clean Air Act. On May 14, 2021, EPA published an interim final rule rescinding the December rule. The interim rule will take effect on June 14, 2021. EPA also asked for comments on this decision. Those comments are due by June 14, 2021. A public hearing will be held on June 9, 2021. The Agency will consider the comments received and publish a final rule addressing all issues raised during the comment period and the public hearing. The interim rule will remain in effect until replaced by a final rule.

The Clean Air Act requires EPA to develop risk management plan requirements for certain industry sectors. The initial requirements were developed in 1994 and amended several times over the years. In 2017, EPA under President Obama published a rule that added significant requirements to these plans. Several parties filed petitions for reconsideration. EPA under President Trump granted some of these petitions and on December 19, 2019, published a final rule that rescinded most of the requirements added in 2017. On May 28, 2021, EPA published a notice for two listening sessions on the current regulatory language. The goals of the listening sessions are to solicit comments and suggestions from stakeholders on the 2019 revisions and to address revised priorities. OSHA will participate in the listening sessions to receive comments on how

Process Safety Management Standards should be incorporated into future risk management plan requirements. The listening sessions will be virtual and will be held on June 16, 2021, and July 8, 2021. Details on how to participate are included in the *Federal Register* notice. While the notice does not explicitly state the Agency is planning on re-instating some or all of the 2017 requirements, most observers believe this is where the Agency is headed.

EPA promulgated their science transparency rule on January 6, 2021. On February 1, 2021, the U.S. District Court for the District of Montana vacated the rule, saying EPA did not follow procedure. On May 28, 2021, EPA Administrator Regan signed a rule that implements the vacatur order. This rule will remove 40 CFR Part 30 from the Code of Federal Regulations. It is scheduled for publication in the June 2, 2021, *Federal Register* and will take effect on that date.

Section 610 of the RFA review

Section 610 of the Regulatory Flexibility Act (RFA) requires that EPA perform a regulatory flexibility analysis of any rule subject to notice and comment unless the agency certifies that the rule will not have a significant economic impact on small businesses. Both the area source and major source boiler MACT rules fall under this section of the act. The five factors considered in a Section 610 review are:

- Continued need for the rule;
- Nature of complaints or comments received concerning the rule;
- Complexity of the rule;
- The extent the rule overlaps, duplicates, or conflicts with other federal, state or local rules; and
- The degree technology, economic conditions, or other factors have changed the areas affected by the rule.

EPA determined that neither rule presented an undue burden on small entities and no changes were warranted at this time. These determinations were placed in two dockets. The major source determination can be found at <https://www.regulations.gov/document/EPA-HQ-OAR-2020-0106-0002>. The area source determination can be found at <https://www.regulations.gov/document/EPA-HQ-OAR-2020-0099-0003>.

Climate change indicators

In a May 12, 2021, press briefing, EPA Administrator Regan announced a series of recent changes to the Agency's climate change indicators web site. Mr. Regan indicated that staff has been continuing to develop data but were not allowed to update the website under the previous administration. The website contains new information on seasonal temperatures, heat waves, sea ice, glacier cover, and others. Additional information can be found at <https://www.epa.gov/climate-indicators>.

PFAS

On May 5, 2021, the Agency for Toxic Substances and Disease Registry (ASTDR) posted a document discussing the toxicity of 12 per- and polyfluoroalkyl substances (PFAS). The metric ASTDR uses is a minimum risk level (MRL). ASTDR states that MRLs are “an estimate of the daily human exposure to a hazardous substance that is likely to be without appreciable risk of adverse noncancer health effects over a specified route and duration of exposure.” This is not the same metric as a reference dose as derived under EPA’s Integrated Risk Information System program. Both programs often rely the same basis data but sometimes differ in the use of uncertainty factors. The report sets oral MRLs for four compounds (perfluorooctanoic acid (PFOA), 3×10^{-6} mg/kg/day; perfluorooctane sulfonic acid (PFOS), 2×10^{-6} mg/kg/day; perfluorohexane sulfonic acid (PFHxS), 2×10^{-5} mg/kg/day; and perfluorononanoic acid (PFNA), 3×10^{-6} mg/kg/day). It did not set inhalation MRLs for any of the 12 compounds discussed. In 2018, EPA set preliminary reference doses (RfD) for PFOA and PFOS at 2.0×10^{-5} mg/kg/day for both. EPA has not released RfDs for PFHxS or PFNA. Details can be found at <https://www.atsdr.cdc.gov/toxprofiles/tp200.pdf>.

EPA announced they will be proposing maximum contaminant level goals for PFOA and PFOS and submitting those to the Science Advisory Board (SAB) for review. This is the first step in the process of developing regulatory limits under the Safe Drinking Water Act. While the Agency did not release a detailed timetable, they indicated the submission to the SAB will be sometime in 2021. EPA currently has 70 ppt health advisories for these two chemicals.

During a recent House defense appropriations subcommittee hearing, the Department of Defense estimated that a complete clean-up of PFAS contamination at their facilities would cost \$2.1 billion.

Environmental justice

Early in EPA Administrator Regan’s tenure, he indicated that environmental justice would be incorporated into every aspect of EPA’s endeavors. Some examples are starting to be seen. For example, EPA will start considering diversity as it appoints members for its federal advisory committees. They have asked Chicago officials to suspend the review of a permit application for a metals recycling plant and conduct an impact analysis on the effects of emissions from the facility on nearby neighbors. They have held a number of webinars on various aspects of environmental justice including training on using EJSCREEN (<https://www.epa.gov/environmentaljustice/environmental-justice-learning-center>). EPA released a preliminary finding that a permit issued to Kinder Morgan Transmix Company in South St. Louis, MO failed to consider the civil rights of residents in a nearby neighborhood. Residents of St. John the Baptist Parish in Louisiana have filed a petition (May 6, 2021) asking EPA to use its emergency authority under the Clean Air Act to reduce the pollutant load on a predominately black community near the Denka Performance Polymer facility. EPA is developing guidance on non-discrimination requirement for entities that receive EPA funding. The White

House Environmental Justice Advisory Council is developing guidance on how to target federal investments to meet the Biden Administration goal of 40 percent of certain federal spending going to disadvantaged communities. At this time, it appears that EPA will “walk the talk” on environmental justice issues.

PVC as a hazardous waste

In 2014, The Center for Biological Diversity (CBD) submitted a petition to EPA to regulate polyvinyl chloride (PVC) waste as hazardous waste. The petition argued that discarded PVC could leach significant amounts of vinyl chloride monomer, phthalates, and other chemicals that would lead to developmental and behavioral abnormalities in humans and wildlife. The Agency has not acted on that petition. On May 19, 2021, CBD sent a notice of intent to sue over the failure to act within a reasonable time. Typically what happens once the Agency receives this type of notice is they enter into negotiations with the litigant to set a timetable to respond to the petition. Failing to do that, the parties will file suit and a district judge, if they find the suit has merit, will set a timetable. One must remember that all these suits do is set a time for EPA to make a decision. It does not dictate whether EPA will or will not grant the petition. This may be a signal that the external groups will continue to use the court systems to force EPA to work on topics of interest to them.

Low-cost sensor challenge

On May 3, 2021, EPA, the U.S. Geological Survey, the National Oceanic and Atmospheric Administration, the U.S. Army Medical Research and Development Command, the Greater Cincinnati Water Works, and the Water Research Foundation announced a water toxicity sensor challenge. The challenge asks innovators to develop a sensor that can determine if there are chemical pollutants or natural toxins in water faster and at less cost than traditional laboratory methods. Initial designs are due on July 20, 2021. The group will award up to three winners prizes up to \$15,000. The second stage will ask the winners and others to develop a working prototype. EPA will hold an informational webinar on June 8, 2021. Additional information can be found at <https://www.epa.gov/innovation/water-toxicity-sensor-challenge>.

EPA FY 2022 budget request

The Biden Administration released their FY 2022 budget request on May 28, 2021. For EPA, the Administration is requesting \$11.2 billion (up from \$9.1 billion in FY 2020) and 15,324 FTEs (up from 14,172 in FY 2020). If appropriated, this would be the highest allocation of funds for EPA since it was founded but not the highest FTE (18,110 in FY1999). If approved, this would put the FTEs back to slightly below the levels in the first year of the Trump Administration (15,408). The justification for the budget request includes:

- Rebuilding infrastructure (additional Superfund remediation, water infrastructure, etc.);

- Protecting public health (PFAS as hazardous substances, managing chemical safety under TSCA, reducing pollution from diesel buses, etc.);
- Climate crisis (climate change research, phase out of HFCs, etc.);
- Environmental justice (grant programs, enforcement of federal civil rights, air pollution monitoring and notification in selected communities, etc.); and
- Enhancing the workforce (adding 1,026 FTEs).

One should remember that this is a budget request to Congress. Given the current political climate, there is little previous data on which to make an estimate on how Congress will respond to this request. While this Congress appears to be willing to increase funding across the board, somewhere in the process they may discover that it is necessary to generate revenue to actual pay for what the government spends.

EPA personnel

On May 12, 2021, the Senate Environment and Public Works Committee held confirmation hearing for Radhika Fox (nominated to be the next Assistant Administrator for the Office of Water) and Michal Freedhoff (nominated to be the next Assistant Administrator for the Office of Chemical Safety and Pollution Prevention). On May 26, 2021, the Committee voted to approve both nominations. Ms. Freedhoff was approved by a 19-1 vote while Ms. Fox was approved by a 14-6 vote. Floor consideration for both nominations has not been scheduled. Most observers expect full Senate approval for both.

Bitcoin mining

The expanded use of bitcoin mining in New York State has created an interesting dilemma. Bitcoin mining requires massive amounts of electricity to verify transactions and maintain the decentralized ledgers. Some estimate the amount of electric power needed for this enterprise to be equal to or greater than the needs of Switzerland. To get that power, bitcoin companies have been re-powering and re-starting older coal-fired power plants. For example, one bitcoin company has re-powered and re-started the Greenidge Power Plant (Seneca Lake, NY). The majority of the power generated supports bitcoin mining with little electricity going to the grid. Several environmental groups are objecting to this and have asked New York Department of Environmental Conservation to revoke their permits even though the facility is within their current permit limits. The environmental groups are objecting because re-starting these units will significantly increase the emissions of greenhouse gases. The request states there are up to 30 power plants in upstate New York that could be converted to full time operations to supply electricity for bitcoin mining and data center operations.

CRWI meetings

Our August 18-19, 2021, meeting will be virtual. Please contact CRWI (mel@crwi.org or 703-431-7343) if you have interest in attending.