



CRWI Update May 31, 2022

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Clean Harbors Environmental Services
Eastman Chemical Company
Heritage Thermal Services
INV Nylon Chemicals Americas, LLC
Ross Incineration Services, Inc.
The Dow Chemical Company
Veolia ES Technical Solutions, LLC

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Formosa Plastics Corporation, USA
3M

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Civil & Environmental Consultants, Inc.
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Ramboll
Spectrum Environmental Solutions LLC
Strata-G, LLC
SYA/Trinity Consultants
TEConsulting, LLC
TRC Environmental Corporation
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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
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PFAS

The House Committee on Science, Space, and Technology approved H.R. 7289 by a voice vote on May 17, 2022. If enacted, this bill would require EPA to commission the National Academy of Sciences to conduct a study on the per- and polyfluoroalkyl substances (PFAS). The study would examine toxicity, environmental fate, and options to address contamination. As approved by the committee, it would give NAS 1.5 years to complete the study. It is possible that this legislation can be passed by the House. Its fate in the Senate is less clear.

As in the past, the major path for PFAS related legislation will be the FY 23 National Defense Authorization Act (NDAA). In the FY 22 NDAA, Congress told the Department of Defense (DoD) to issue guidance on incineration by April 26, 2022, or stop using incineration to treat PFAS wastes. DoD did not issue guidance but instead issued a ban. That ban expires at the end of FY 22 (September 30, 2022). Congress could extend the ban another year in the FY 23 NDAA. Six Congressmen (four Republicans and two Democrats) sent a letter to the House Defense Appropriations Subcommittee encouraging the subcommittee to include report language that would require DoD to use methods other than incineration to destroy PFAS waste materials. They specifically mentioned using supercritical water oxidation. This legislation still has a long way to go before enactment. It is difficult to predict what will remain in the final version.

Organizations representing solid waste landfills and municipal waste water treatment facilities are urging Congress to provide exemptions from Superfund liability should EPA add PFAS compounds to the list of hazardous substances under CERCLA. The current statute does not allow the Agency to exclude any industry sectors. Members of these organizations are concerned that a significant number of their facilities would become Superfund sites should EPA finalize this rule.

Every six months, EPA updates their Regional Screening and Removal Management Levels to Protect Human Health and the Environment. The May 18, 2022, update modified the screening levels for five PFAS compounds (perfluoropropylene oxide dimer

acid, perfluorooctanoic acid, perfluorooctanesulfonic acid, perfluorononanoic acid, and perfluorohexanesulfonic acid) based on updated reference doses. Screening level are not considered clean up standard but if the contaminant is below that level, no further action is needed. Additional information can be found at <https://www.epa.gov/risk/regional-screening-levels-rsls-whats-new>.

During an American Bar Association Superfund Master Class in May, an attorney reported that EPA has issued requests for information under section 104(e) of CERCLA to a number of Superfund sites on past and current uses of more than a dozen PFAS compounds. This section of the statute gives EPA broad authority to request information. The sites include those currently operating, those closed under state brownfield programs, those that have stopped operating but have not yet been cleaned up, and those currently in active clean up. It is not clear how the Agency intends to use this information.

On May 23-24, 2022, the Cancer Free Economy Network held an online seminar on PFAS disposal options. Contributors to this symposium stated that there are no good ways to dispose of PFAS waste. They also dismissed using either landfills or incineration as safe methods and noted that these facilities are often in environmental justice communities. One presenter stated that the criteria for potential destruction methods must include full destruction, not concentrate pollution in environmental justice communities, treat materials on-site where ever possible, use contained systems, and any residuals be tested for hazardous byproducts.

During testimony before a House appropriations defense subcommittee (May 26, 2022), the Department of Defense Deputy Assistant Secretary for Environment and Energy Resilience stated that the department had “indicators that a very large portion of the PFAS molecules are in fact eliminated when incineration is conducted for a long enough time at a high enough temperature.”

Environmental justice

On May 5, 2022, the Department of Justice released their environmental justice enforcement strategy (<https://www.justice.gov/asg/page/file/1499286/download>). The document lays out four principles and how the Department plans to implement those principles. Some of the methods are to create an Office of Environmental Justice within the Environment and Natural Resources Division, designate environmental justice coordinators in U.S. Attorney’s offices, create local or regional task forces, develop detailed implementation instructions and resource materials to facilitate implementation of the strategy, and conduct listening sessions in environmental justice communities.

In addition, the Agency released (May 26, 2022) an update of their 2014 legal guidance document entitled “EPA Legal Tools to Advance Environmental Justice” (<https://www.epa.gov/ogc/epa-legal-tools-advance-environmental-justice>). The document is a statute-by-statute and program-by-program look at the legal authorities the Agency already has to address environmental justice concerns. The introduction

states that the document is “not intended to prescribe when and how the Agency should undertake specific actions.” However, it does contain detailed citations and references to where EPA has legal authority to respond to environmental justice issues.

In May, EPA granted two petitions objecting to Title V permits partially based on environmental justice concerns. In a May 12, 2022, decision, EPA objected to a Texas Commission on Environmental Quality permit for a Gulf Coast Growth Ventures facility in San Patricio County. The primary question raised by EPA is whether the permit includes the necessary monitoring requirements to ensure compliance. The accompanying analysis showed that 58% of the residents within 5 kilometers of the facility are people of color and 29% are low income. On May 26, 2022, EPA published a partial rejection of a Title V permit issued by the Alabama Department of Environmental Management (ADEM) to the UOP chemical plant in Mobile County. This objection was based on unclear items in the permit and that ADEM did not properly respond to public comments. In this action, EPA stated that 81% of the population within 5 kilometers are people of color and 64% are low income.

In an address to the American Bar Association, the Acting Assistant Administrator for EPA’s Office of Enforcement and Compliance Assurance told the audience that the Agency intends to step up enforcement of environmental violations in environmental justice communities. Some of the tools they will use are increased inspections, early relief for communities near non-compliance facilities, adoption of remedies that address non-compliance, and increased engagement with environmental justice communities. He also stated that the Agency is ready to increase in-person inspections.

EPA Region 9 met (May 4, 2022) with California Department of Toxic Substances Control over alleged violations of RCRA and Civil Rights Act requirements related to the hazardous waste landfills at Kettleman City and Buttonwillow. Both facilities are in the process of renewing their permits.

New York state approved a project to expand a natural gas pipeline to a liquified natural gas (LNG) terminal in poor and minority areas of Brooklyn NY when it found it would have no environmental effect. This project would allow export of Pennsylvania natural gas. A group objected arguing that the approval did not properly consider the pipeline to be an integral part of the LNG terminal which they contend violates state law. In subsequent discussions, EPA has agreed to give activists a seat at the table during the negotiations to address the issues raised.

CWA HS comment period extended

On May 16, 2022, EPA extended the comment period for the Clean Water Act (CWA) hazardous substances (HS) discharge planning regulations until July 26, 2022. Additional details can be found in the *Federal Register* notice.

E-manifest comment period extended

On May 24, 2022, EPA extended the comment period for the proposed modifications to the e-manifest system until August 1, 2022. Additional information can be found in the *Federal Register* notice.

LDR guidance

As a part of a FY18-19 program, EPA reviewed 57 hazardous waste treatment facility's waste analysis plans (WAP) and 14 land disposal restriction (LDR) inspection sampling results. The analysis revealed numerous WAP deficiencies including insufficient sampling frequency, sampling methods, and waste variability characterization. Only four of the 14 LDR facility inspections showed all sampled batches complied with LDR treatment standards. Batch failure rates ranged from 2.6 to 84%. Some of the problems identified include:

- Inadequate or unjustified WAP LDR verification sampling frequencies;
- Incorrect or unjustified WAP LDR verification sampling methods;
- Inadequate evaluation of incoming waste variability and treated waste variability; and/or
- Lack of permit controls to ensure well-designed and operated processes that would justify the WAP sampling approach.

The Agency concluded that the failures were caused by inadequate LDR treatment design and operations, insufficient WAP treatment verification sampling, or both. This bulletin is designed to help permit writers, inspectors, and the regulated community address this issue. It does not appear to modify the 2015 WAP guidance or EPA's official WAP policy memo (Williams June 12, 1987, <https://rcrapublic.epa.gov/files/12943.pdf>) but adds further explanation on how the Agency can increase the LDR compliance rates. A copy can be found at https://www.epa.gov/system/files/documents/2022-05/LDR_InformationBulletin_4-29-22.pdf.

RCRA PVC petition

In 2014, the Center for Biological Diversity (CBD) submitted a petition asking EPA to regulate discarded polyvinyl chloride (PVC) as a hazardous waste. EPA did not respond to that petition and CBD sued. The two parties worked out a proposed consent decree that was published on May 4, 2022. Under the proposed decree, EPA will sign a tentative decision on or before January 20, 2023, and a final decision by April 12, 2024. It should be noted that this agreement does not obligate EPA to list discarded PVC waste as hazardous, it only requires them to respond to the petition. Should EPA decide to grant the petition in 2024, the Agency would then have to embark on a rulemaking to actually list the materials as hazardous waste.

EPA personnel

On May 26, 2022, the Senate confirmed Dr. Chris Frey as the new Assistant Administrator for EPA's Office of Research and Development. On May 18, 2022, the Senate Environment and Public Works Committee held a hearing on the nomination of Joe Goffman to be the next Assistant Administrator for the Office of Air and Radiation. Mr. Goffman is currently the principal deputy assistant administrator for the Air Office but has been performing the duties of the Assistant Administrator for some time. No date has been set for a committee vote. The nominations of Carlton Waterhouse to be the next Assistant Administrator for the Office of Land and Emergency Management and David Uhlmann to be the next Assistant Administrator for the Office of Enforcement and Compliance Assurance have not yet been placed on the Senate calendar. EPA Administrator Regan appointed Casey Sixkiller to be the Regional Administrator for Region 10. All 10 regions now have administrators.

DOJ SEP regulations

Prior to 2017, the Department of Justice (DOJ) had entered into settlement agreements that involved payments to certain third parties as a way of addressing harms arising from environmental violations. In 2017, DOJ released a memo that prohibited this action and in December 2020, amended its regulations to add 28 CFR 50.28 to codify the actions prohibited in the memo. On May 10, 2022, the DOJ published an interim final rule that removed 28 CFR 50.28. DOJ's current position is that the use of supplemental environmental projects (SEP) and payments to third parties should be governed by memorandums rather than regulations. DOJ released a concurrent memo that allows the use of SEPs and payment to third parties under certain circumstances. In addition to the interim final rule, DOJ is asking for comments on this action. However, the interim final rule will stay in place until DOJ reviews comments and decides make changes, if any. DOJ is touting this as one of the ways the Department is addressing environmental justice issues.

Refinery fence line monitoring

Refineries are currently required to put into place a fence line monitoring program to monitor benzene emissions from the facility. As currently implemented, facilities are required to place a series of passive monitors, collect the data on a periodic basis, and report that data as an annual average. If the benzene levels are 9 µg/m³ over background, the facility is required to do a root cause analysis to determine the cause and take corrective action. These requirements have been in place since 2018. Using data reported to EPA, the Environmental Integrity Project (EIP) found that six refineries exceeded the 9 µg/m³ threshold in 2019 and 2020 and that 12 had exceeded the threshold in 2021. Under current rules, this is a monitoring requirement. However, EIP is calling on EPA to start enforcement actions based on these "exceedances."

CRWI meetings

Our next meeting will be on August 17-18, 2022, in Durham, NC. It will include a tour of the Enthalpy Analytical laboratories. Please contact CRWI (mel@crwi.org or 703-431-7343) if you have interest in attending.