



CRWI Update November 30, 2016

MEMBER COMPANIES

Clean Harbors Environmental Services
Dow Chemical U.S.A.
E. I. Du Pont de Nemours
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

ASSOCIATE MEMBERS

AECOM
Alliance Source Testing LLC
Amec Foster Wheeler PLC
B3 Systems
Coterie Environmental, LLC
Focus Environmental, Inc.
Franklin Engineering Group, Inc.
METCO Environmental, Inc.
O'Brien & Gere
SGS North America, Inc.
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

2016 election

While most pundits predicted that the Republicans would retain their majority in the House and the Senate, very few predicted a Donald Trump win. To most everyone's surprise, he won the Electoral College vote taking several states that have in the past been Democrat strongholds. The new Congress will convene on January 3, 2017. They will have 17 calendar days before Donald Trump is inaugurated as the 45th president. At that time, the Republicans will control the Executive Branch and both Houses of Congress.

There is a great deal of speculation about what a Trump White House will try to accomplish. During the campaign, he vowed to repeal the Affordable Care Act (ACA) and undo the Obama climate change initiatives. Since being elected, he has walked back some of the expectations on repealing the ACA saying that parts might be worth keeping. Repealing the ACA will require the cooperation of Congress. While the Republicans control both Houses, they do not have sufficient votes in the Senate (requires 60) to overcome a filibuster. Both the Democrats and the Republicans agree that the ACA needs changes but they differ on what those changes should be and how they will get paid for. It is possible that the House of Representatives will pass a bill that repeals the ACA before January 20, 2017. However, the Senate Democrats will make it difficult for a total repeal of the Act to get off the floor, setting up negotiations on legislation that would modify the law rather than repeal it. This could mean that any changes to the ACA will be fought over for an extended period of time before a final bill is presented to the new President for a signature.

Executive Branch actions are easier to undo. For example, the Paris climate agreement was never ratified by the Senate but was approved by a Presidential Executive Order. Executive Orders are easily overturned by the next President. In addition, if the United States does not contribute to the Paris agreement, the entire agreement may effectively fall apart with other countries also refusing to reduce carbon dioxide emissions. On the regulatory front, the main regulations to reduce carbon

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dioxide emissions are the corporate fuel economy standards for mobile sources and the Clean Power Plan for the electric generation industry. A Trump EPA could simply delay any additional increases in fuel economy standards and stop defending the Clean Power Plan in the current litigation. While others could continue to defend the rule, the Administration could tell the court they no longer support the rule and request a voluntary vacatur.

When a new Administration comes into office, one of the first things they often do is to freeze all regulatory actions that have not already been published in the *Federal Register* or have not yet become effective. EPA has been trying to push through as many regulations as they can before January 20, 2017. The Agency currently has 28 rules at the Office of Management and Budget (OMB) for review. While some are on court ordered deadlines and OMB will address these first, several will simply not make it through that review before January 20, 2017. As a point of reference, OMB cleared five EPA rules in the last 30 days. There is little chance that all 28 rule currently at OMB will be cleared before January 20, 2017.

Congress may also have a role to play in recent rules. The Congressional Review Act (CRA) requires major rules to be submitted to Congress. Congress then has 60 legislative days (days when they are in session) to file a resolution of disapproval. If the resolution of disapproval is passed by both Houses (cannot be filibustered) and signed by the President, the regulation is overturned. In addition, should a resolution of disapproval be signed, it bars the Executive Branch from issuing similar rules in the future. Specifically, the law states that a rule “may not be reissued in substantially the same form, and a new rule that is substantially the same as such a rule may not be issued, unless the reissue or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule.” The restriction of issuing future rules creates some reluctance to use this mechanism even when one party controls both Houses and the Presidency. The Office of Congressional Research has determined that rules submitted to Congress after May 30, 2016 are subject to the Congressional Review Act for the next Congress. This time period includes a large number of regulations but the trade press is reporting that only a small number are being considered, mostly rules that impact the oil and gas sector. It is possible that the new Congress will pass a several resolutions of disapproval and have them ready for the new President’s signature shortly after January 20, 2017. It should be noted that this law has only been successfully used once. That was by the Bush Administration to overturn a Clinton era OSHA rule on ergonomic safety standards.

For those rules outside the reach of the CRA, a new administration could always go through the rulemaking process to revise or withdraw current rules. However, this would require a new rulemaking which is time consuming and would then be subject to challenge in federal court by the rule’s supporters. Implementation of existing rule could also be slowed or modified by Executive Orders and modification of the EPA’s funding. Most of the major industry trade groups and companies have already submitted or will soon submit suggestions on rules, policies, and guidelines they would like to see modified. While most of the focus has been on rules or policies to be modified, a new

administration could also change its enforcement policy and methods. While bureaucratic inertia and the current case load will prevent many immediate changes, a shift in the Department of Justice's enforcement policies and emphasis is likely in the new administration.

There is still a great deal of uncertainty around the issues President-Elect Trump will attempt to modify. But this is to be expected this early in the transition period. Some of his environmental policies will become clearer when he announces his choice as the new EPA Administrator. Myron Ebell is the head of the EPA transition team. Mr. Ebell was recently a director at the Competitive Enterprise Institute and the chair of the Cooler Heads Coalition. The trade press has mentioned several names as possible Administrators including Kathleen Hartnett White, Scott Pruitt, and Jeff Holmstead. Ms. White is a former commissioner of the Texas Council of Environmental Quality. Mr. Pruitt is currently the Attorney General for the state of Oklahoma and is leading the litigation to overturn the Clean Power Plan. Mr. Holmstead is a former Assistant Administration for the Office of Air and Radiation under President George W. Bush. The Washington Post has reported that Mr. Holmstead has gone as far as de-registering as a lobbyist. But recent history should have taught us that Mr. Trump's selections do not always follow conventional wisdom.

In addition, one should always remember that not all campaign promises get implemented.

Boiler litigation

On November 1, 2016, the U. S. Court of Appeals for the District of Columbia Circuit asked the other parties' opinion on EPA's request to modify the remedy from vacatur to remand for certain major source boiler standards. On November 16, 2016, all other parties supported the request. The court has not asked for opinions on any other petition for rehearing of this case. On the second boiler reconsideration litigation, industry intervenors filed their brief supporting the Agencies position on the use of a 130 ppm carbon monoxide threshold and the use of work practices during startups and shutdowns. Reply briefs are due on this litigation on January 12, 2017.

Brick MACT litigation

Opening briefs for the Brick MACT litigation were filed on November 14, 2016. Both Industry and environmental groups are challenging this rule. Each side is taking familiar positions. Industry is arguing that EPA failed to justify its calculations of the MACT floor, the rejection of subcategories violated Congress' intent, EPA has no authority to issue MACT standards for the clay and tile sector because there are no major sources in this category, and the Agency failed to account for malfunctions when developing the standards. The environmental groups are arguing that EPA unlawfully issued health-based standards, the upper prediction limit method does not reflect a true average as required by the law, and the Agency unlawfully offered alternative MACT floors. EPA's

response brief is due to the court on January 19, 2017. Final briefs are due March 14, 2017.

Revised generator final rule

The revised generator rule was published on November 28, 2016. It becomes effective on May 30, 2017. A summary of the final rule can be found in the October 2016 Update.

Export/import final and proposed rule

The export/import final and proposed rules were published on November 28, 2016. The final rule becomes effective on December 31, 2016. EPA will hold a webinar to discuss the requirements of this rule on December 12, 2016. One can register for the webinar at https://clu-in.org/training/#Hazardous_Waste_Export-Import_Final_Rule_Requirements_and_Implementation_20161212. Comments on the proposed rule are due on January 27, 2017. A summary of both rules can be found in the October 2016 Update.

Procedure 2 direct final rule

On November 21, 2016, EPA published a direct final rule and an accompanying proposed rule changing the requirement that the annual relative response audit (RRA) test results must fall within the range of data collected when developing the original calibration curve for a PM CEMs. This modification became necessary because a number of facilities had reduced their PM emissions to a level that it was not possible to meet this criterion. Under the direct final rule, the facility can extend the calibration line and the $\pm 25\%$ lines toward zero. If the data from the RRA falls within the extended range, the instrument has passed the audit. This rule will take effect on February 21, 2017, unless adverse comments are received by December 21, 2016.

Non-waste determination proposed rule

On November 1, 2016, EPA published a rule proposing to add railroad ties that have been treated with processed creosote-borate, copper naphthenate, and copper naphthenate-borate to the list of categorical non-waste fuels. To meet the criteria for this category, these treated ties must be combusted in existing stoker, bubbling bed, fluidized bed, or hybrid suspension grate boilers and can comprise no more than 40 percent of the fuel used on an annual heat input basis. The comment period closes on January 3, 2017.

TSCA chemicals

On November 29, 2016, EPA released the first 10 chemicals already in the marketplace to be evaluated under the recently amended Toxic Substances Control Act (TSCA). The revisions to TSCA were signed into law on June 22, 2016. Under the new law,

once EPA publishes the list in the *Federal Register*, it will have six months to release a scoping document for each chemical. The scoping document will include hazard, exposure, conditions of use, and susceptible subpopulations information. The Agency will then have three years to determine whether each chemical presents an “unreasonable risk of injury to health or the environment.” For each chemical that poses an unreasonable risk, the Agency is required to take actions within two years to restrict their use or find some other method to mitigate that risk. For each evaluation completed, the law requires the Agency to begin another. The law also requires that by the end of 2019, the Agency must have at least 20 evaluations ongoing. The first 10 chemicals are:

- 1,4-dioxane;
- 1-bromopropane;
- Asbestos;
- Carbon tetrachloride;
- Cyclic aliphatic bromide cluster;
- Methylene chloride;
- N-methylpyrrolidone;
- Pigment violet 29;
- Tetrachloroethylene (perchloroethylene); and
- Trichloroethylene.

Enforcement

On November 17, 2016, EPA published a consent decree with CITGO Petroleum Corporation. As a part of the consent decree, CITGO agreed to install low-NO_x burners on three heaters, reduce PM emissions from their catalytic cracking unit, improve operations at their sulfur recovery unit, implement a flare reduction program, enhance their leak detection and repair program, and use carbon canisters to reduce benzene emissions at their Lemont, IL refinery. The company will pay a \$1.995 million fine, implement a \$650,000 fence line monitoring project, implement a \$350,000 green lighting project at a local school, and control an additional benzene waste stream that it is not otherwise required to control. Additional information can be found in the *Federal Register* notice.

On November 28, 2016, EPA announced settlement agreements with Baylor University, Texas A&M University, and Texas Christian University (TCU) over their handling of hazardous waste. Baylor claimed to be a small-quantity generator but at times generated more waste than is allowed under this category. They also generated hazardous waste without identifying them as such. Baylor agreed to fix the problems, pay a \$11,330 civil penalty, and purchase and donate equipment to the Waco Fire Department that will aid in identifying explosives, narcotics, and toxic chemicals during emergency responses. TCU improperly operated as a large quantity generator because it produced more than a kilogram per month of acutely hazardous waste. Between 2011 and 2015, TCU failed to notify the state of Texas and did not make adequate or

accurate hazardous waste determinations. TCU agreed to fix the problems and pay a \$30,591 civil penalty. Violations were found at four of Texas A&M campuses: Commerce; Kingsville Citrus Center; the Veterinary Medical Diagnostics Laboratory in Amarillo; and the Geothermal and Environmental Research Group in College Station. These violations included producing sufficient hazardous waste to qualify as a large quantity generator but failing to register, generating acutely hazardous waste without proper notification, and not filing the required paperwork. A&M agreed to fix the problems and pay a \$141,912 fine.

On November 29, 2016, EPA published a proposed consent decree with the United States Steel Corporation. As a part of the consent decree, U.S. Steel agreed to undertake measures to reduce air pollution at its Gary, ID; Ecorse, MI; and Granite City, IL plants, pay a \$2.2 million civil penalty, and fund seven supplemental environmental projects valued at \$1.9 million. Additional details can be found in the *Federal Register* notice.

New Jersey resolution

On November 14, 2016, New Jersey lawmakers advanced a resolution opposing a hazardous waste incinerator currently proposed for Falls Township, PA, a property across the Delaware River from several New Jersey cities. Assembly Resolution 175 denounces Elcon Recycling Services' plans to build an incinerator that would process approximately 210,000 tons of hazardous waste per year. The description of the facility in the news release does not match the description given by the company in their February 2016 RCRA pre-application meeting. In this meeting, Elcon (<http://elconrecycling.com/usa/>) describes the process as not liquid or solid waste incineration but includes thermal oxidization as an air pollution control device. The flow chart for the installation shows a chemical/physical separation process to remove particulates followed by a distillation process to concentrate the dissolved salts and a thermal oxidizer to eliminate the organics. Waste heat will be recovered by a boiler. The distilled water will be used on-site while the solids will be disposed of in landfills. The company estimates treating 20 trucker tanks per day when operational. It appears that this will be a treatment process for hazardous waste water that will remove the salts, scrub the organics, use the water for cooling, and land dispose the solids.

CRWI meeting

The next CRWI meeting will be held in February 2017. We are currently working on the date and a location. For additional information on any of the topics above, contact CRWI (mel@crwi.org or 703-431-7343).