



## CRWI Update November 30, 2018

### MEMBER COMPANIES

Clean Harbors Environmental Services  
DowDuPont  
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  
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  
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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### Defective airbag inflators interim rule

The Takata airbag recall involves 19 automobile manufacturers and approximately 70 million vehicles. The recall process started in 2008 but is not expected to be completed for some models until 2020. In 2015, the National Highway Traffic Safety Administration (NHTSA) ordered that all recalled airbag modules be preserved rather than destroyed. In 2017, EPA issued a memo indicating that airbag modules that were held under the preservation order were not subject to RCRA regulations because they were not being discarded. In a 2018 amendment, NHTSA allowed Takata to reduce the number of modules that were being preserved to 5% of the total number recalled. Because of this modification, the majority of the modules could be discarded and the generator status of many automotive dealers would be impacted. On November 30, 2018, the Agency published an interim rule regulating the treatment and disposal of airbag inflators. While this rulemaking was prompted by the recall, it also covers the removal and disposal of all airbag inflators. Under the interim rule, dealers and scrap vendors are exempted from RCRA hazardous waste rules for the removal of the airbags if the modules are shipped to an airbag waste collection facility or a RCRA TSDF. Airbag waste handlers can accumulate up to 250 modules for up to 180 days. It requires handlers to follow packaging, labeling, and transportation requirements and keep records for three years. It also prevents the reuse of recalled inflators. This rule goes into effect on the date of publication.

Due to the threat of explosions for recalled inflators (two already with one fatality), the Agency did not go through the normal rulemaking process. Instead they used the interim final rule process and will be asking for comments on the decisions made. Comments will be accepted until January 29, 2019.

### Test method amendments

On November 14, 2018, EPA published a final rule making a number of technical amendments to various test methods. Based on comments, EPA did not modify the allowable filter temperature for Method 5 probes. They modified Methods 26

and 26A to allow the use of both glass and polyethylene storage containers. The Agency modified proposed language in the General Provisions to allow EEE facilities to submit CMS Performance Test results at the same time as confirmatory test plan results. The majority of these changes were technical corrections and removing typographical errors.

### **Delegation of authority**

EPA published two notices of delegations of authority for NESHAPs in November. The first was for West Virginia (November 5, 2018) and the second was for Virginia (November 8, 2018). Both updated state authority to administer and enforce NESHAP and NSPS provisions. Additional details can be found in the *Federal Register* notices.

### **E-manifest data released**

On November 14, 2018, EPA sent out a press release that e-manifest data is now available to the public on their RCRA Info webpage (<https://rcrapublic.epa.gov/rcrainfoweb/action/main-menu/view>). According to the press release, manifest data are released 90 days after receipt at the receiving facility. This information includes manifest tracking numbers, id and name for all sites reported on the manifest, number and types of containers, waste codes, management methods, and quantity of waste shipped. This list does not include certain chemicals excluded by the Department of Homeland Security.

### **Permit deadlines**

In their 2018-2022 Strategic Plan, EPA stated that their goal was to have all permitting decisions made within six months of receiving a completed application. During a meeting in late October, staff from EPA's Office of Resource Conservation and Recovery's permitting branch told state officials they anticipate expanding this concept to include state issued permits. This created a great deal of discussion. Given that the average RCRA permit takes four and a half years to complete, trying to meet a six month timetable may be challenging.

### **Enforcement**

On October 30, 2018, Acting EPA Administrator Wheeler sent a guidance memo to the regional administrators and the assistant administrators on how the agency intends to oversee state enforcement actions. This is part of the push to move more authority to the states. Oversight of the states will have three parts.

1. Formal, retrospective reviews of state programs using national criteria and procedures. These reviews will be held at prescribed intervals and will not include all states.

2. Regular meetings and discussions with states. These are to occur on an annual or quarterly basis and are designed to give EPA personnel an up-to-the-date understanding of how that state's program is being implemented.
3. Matter specific meetings. These are designed to address urgent or precedential enforcement issues or where significant federal violations are identified.

The memo states that there will be general deference to the states except under unusual circumstances. It also states that EPA will not withdraw implementing authority until all other options have been considered.

### **Climate change report**

On November 23, 2018, the Trump Administration released the second volume of the fourth National Climate Assessment (<https://nca2018.globalchange.gov/>). This report paints a rather dire picture of both current effects and future risks from climate change. Some of the predictions include 1-4 feet rise in sea level on the Atlantic Coast by 2100 with the possibility of an 8 foot rise. It also predicts a 10% decrease in the Gross Domestic Product by 2100 due to changes in the climate. It should be noted that this work uses the social cost of carbon metric that was developed under the Obama Administration. It is unclear how using the metric favored by the Trump Administration might change the analysis. While it is unlikely that this report will change President Trump's opinions of climate change, it will provide a substantial amount of political ammunition that the Democrats will try to use to their advantage. However, they will need to be careful because a number of the new Democrats in the House are from districts that could easily switch back in 2020. Forcing these individuals to vote on something that may be unpopular in their district might be counterproductive.

### **EPA personnel**

EPA's Region 4 Administrator Trey Glenn resigned on November 18, 2018. An Alabama grand jury indicted Mr. Glenn on November 13, 2018, on several counts of violating Alabama's ethics laws. Mary Wheeler, the current deputy regional administrator, has been appointed as Acting Region 4 Administrator.

On November 16, 2018, President Trump announced his intent to nominate Andrew Wheeler to be the next EPA Administrator. However, the nomination has not formally been sent to the Senate. The likely reason is that all nominations not acted upon by the end of this Congress are returned to the President on January 3, 2019, and have to be re-submitted to the next Congress. It is unlikely that Mr. Wheeler's nomination will generate much controversy but any delays would make it difficult to complete the process this session. Expect his nomination to be sent early in the next Congress.

On November 29, 2018, the Senate Environment and Public Works held a hearing on Alexandra Dunn's nomination as the Assistant Administrator for the Office of Chemical Safety and Pollution Prevention. Ms. Dunn is currently Region 1's Regional Administrator. While her nomination is not expected to be controversial, the process

may not be completed before the Senate adjourns. The Senate has not held a vote on Peter Wright's nomination to be the next Assistant Administrator for the Office of Land and Emergency Management. His nomination has been on the Senate calendar since August 1, 2018.

### **Citizen science webinars**

At least two seminars on citizen science are planned for December. The first is on December 4, 2018, and is sponsored by the Association of Corporate Counsel Environmental & Sustainability Network. The title is "How to Mitigate Enforcement Risks from U.S. Citizen Environmental Monitoring and Crowdsourced Data." Bina Reddy, an attorney with Beveridge and Diamond will be leading this webinar. Details can be found at <https://acc.inreachce.com/Details/Information/b6b360f1-c49f-46fe-90bf-30500c8be0ff>. The second is a webinar sponsored by AW&MA and will be held on December 11, 2019. Its title is "Air Sensors: New Opportunities, New Challenges and Impacts on Sources and Regulators." Details on this webinar can be found at <https://www.awma.org/webinars>.

### **OB/OD**

A national coalition of environmental groups has been pushing the U. S. Army to end or sharply curtail their open burn/open detonation (OB/OD) method of disposing of certain types of bulk propellants. Congress passed legislation requiring the National Academy of Sciences to conduct a study on the alternatives to OB/OD. The study committee plans to release their findings in a December 6, 2018, webinar (<https://www.eventbrite.com/e/alternatives-for-the-demilitarization-of-conventional-munitions-webinar-registration-52230236042?aff=erelexpmlt>). In the meantime, the Army's Acting Deputy Assistant Secretary for Environment, Safety, and Occupational Health has told commands to minimize the amount of OB/OD of explosive wastes and to eliminate the use of open burning of other wastes. In addition, the Department of Defense Office of the Inspector General is conducting a probe of the military's compliance with environmental regulations at OB/OD sites.

### **Camp Minden defendants sentenced**

The U. S. Army awarded a \$8.6 million contract to Explo Systems Inc. to demilitarize and resell 1.35 million propelling charges containing M6 propellant. The company submitted false certifications, improperly transported the materials to unpermitted facilities, and improperly stored the materials. In 2012, 124,000 pounds of smokeless powder and a box trailer containing approximately 42,000 pounds of M6 propellant exploded shattering windows within a four mile radius, derailing 11 rail cars parked near the depot, and causing the evacuation of Doyline, LA. On November 29, 2018, five top officials of Explo Systems Inc. were sentenced. The co-owner was sentenced to 55 months of prison, three years of supervised release, and will be required to pay \$34,798,761 in restitution. The vice president for operations was sentenced to 60 months in prison, three years of supervised release, and required to pay \$149,032.80 in

restitution. Three other individuals also received prison sentences, supervised release and are required to pay restitution.

### **Mid-term elections**

Most of the 2018 election results are now official. As expected, the Democrats picked up 39 seats in the House of Representatives and the Republicans picked up two seats in the Senate. The Democrats now control the House by 234 to 200 (one race still in recount). While this is a slim majority (218 needed for a majority), it is a majority and the Democrats will be able to set the agenda for the House. Nancy Pelosi (CA), Steny Hoyer (MD), and Jim Clyburn (SC) all ran unopposed as the Democratic nominees for the top three House leadership positions. On November 28, 2018, all three were selected by the Democratic Caucus. Even though she was running unopposed, 32 Democrats voted against Ms. Pelosi. Thus there is considerable opposition to Ms. Pelosi primarily from the newly elected Democrats. Her next challenge is to get the entire House to elect her as the Speaker. To do this, she needs 218 votes. It is unlikely that any Republican will vote for her so she needs to convince at least 16 of the Democrat no voters to support her. However, she is a veteran politician and has until January 2019 to get the 16 votes.

The Republicans picked up two seats in the Senate. While this does not give them enough votes to overcome a filibuster (60 needed), it does give them a little extra room for defections when approving nominations (especially judicial nominations) and is enough to change the distribution in some Senate Committees. This too will make it easier for the Republicans to push their agenda in the Senate.

With the Democrats controlling the House and the Republicans controlling the Senate and the Executive Branch, the U.S. once again has a divided government. Any controversial legislation passed by the one house will get stymied by the other. One would think this would lead to gridlock but it is difficult to see the 116<sup>th</sup> Congress being any more dysfunctional than the 115<sup>th</sup> one. While the Democrats may not be successful in pushing their legislative agenda, they can use the oversight authorities in the House to keep Executive Branch activities in the spotlight. One should expect a significant amount of scrutiny for EPA's current deregulator activities. While they may not be able to change what the Executive Branch is doing, they can make sure it becomes an issue in the 2020 elections where the Democrat's goal is to retake the Senate and the White House.